University of Alberta

Dislocating Deliberative Democracy: Recognition and Transnational Activism

by

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Abstract

This project is an attempt to work out a normative framework that is compelling and relevant for democratic practices today. It argues that a non-foundationalistic deliberative model is the strongest among other leading normative democratic theories, and concentrates on the ways in which the deliberative paradigm ought to develop in response to contemporary globalization. Other deliberative democrats, such as Jürgen Habermas, are similarly motivated to render their abstract normative theories responsive to this pervasive feature of contemporary reality, and consequently aspire to reinforce the deliberative quality of constitutionally structured democratic processes and institutions. What Habermas argues and what this dissertation contests is that deliberative democracy presupposes a constitutional-legislative framework.

A more adequate response to politics today—at least insofar as deliberative theory is to remain oriented around the core norm of equal respect for persons—involves working to facilitate direct access for civil society actors to certain international centers of governance that may not be constitutionally structured. This claim is supported by the dissertation's investigation into a range of irreducible normative goals that are at stake in political contexts. The range developed here is more extensive than usual; and calling attention to this wider range has important consequences for the sorts of political contexts that present themselves as worthy of deliberative democrats' efforts. One pivotal aspect of this argument involves linking the understanding-oriented stage of the deliberative process to the

experience of recognizing the Other as other; and, correspondingly, tracing the range of normative goals at issue back to this experience of recognition.

A central thesis of this project, then, is that my further normative development of the deliberative paradigm importantly opens up contexts of application for that extend beyond constitutionally structured channels, and that are otherwise at risk of being prematurely dismissed by deliberative theorists. In order to assess and render more concrete these largely abstract and conceptual arguments, a case study is invoked at the close of this project: the deliberative-democratic potentials available in the context of NGO mobilizations for direct input at the WTO are examined, albeit in a preliminary manner.

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For Jan Zwicky

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Introduction

Domestic state borders are, in general, increasingly permeable to various types of communications, interactions, and exchanges involving actors across the globe. The broadening, deepening, and acceleration of such processes and interdependencies, especially since 1989 and the unraveling of communism in Europe, reframes many of the questions that have occupied democratic theorists. Perhaps most fundamentally, globalization raises the question of whether the state can and should remain the locus of democratic thought.

The deliberative theory of democracy appears well equipped to respond to collective issues that traverse the boundaries of individual states and that require democratic coordination. I characterize the discursive or deliberative ideal in broad terms as an aspiration for equal respect for persons. Most centrally, the ideal stipulates that every affected person deserves a voice in fair processes of dialogue and deliberation regarding the issues and decisions that affect them. This ideal of democratic legitimacy is indexed to *all persons affected* rather than to *citizens of a state*, or *members of a particular constitutional framework*. Thus, at least at an abstract level of analysis, the deliberative model seems quite capable of doing work in transnational or extra-state and extra-constitutional contexts.

Furthermore, the deliberative theory of democracy outlines a way of organizing collective life that can bring us into contact with variously situated others in normatively rich ways. My particular elaboration of the model stresses that deliberative spaces promote relations of regard and respect by facilitating the experience of recognizing a distinct other. This emphasis on the subtle yet crucially transformative effects of deliberative involvement opens up contexts of application for the paradigm—particularly extra-constitutional contexts—that other deliberative democrats doubt or minimize.

My main interlocutor in this project is Jürgen Habermas, who has been at the center of deliberative democratic theory since he inaugurated it about three decades ago. Habermas is largely responsible for the deliberative paradigm's prominence today: his work has influenced and informed that of other leading deliberative democrats, such as Seyla Benhabib, James Bohman, and Iris Marion Young. Becoming familiar with Habermas is one very pivotal way of participating in the field of deliberative democratic theory. Although I am critical of defining aspects of Habermas's deliberative paradigm—his foundationalistic universalism, his valorization of modern liberal societies, and his domestication of the ideal—I am nonetheless inspired by and indebted to his work. The normative ambition, the sustained commitment, and especially the breadth and interdisciplinary reach of Habermas's thought single him out to me as one of the great philosophers of this historical period.

Between Facts and Norms (1996) is principal among Habermas's more recent manuscripts. In it, Habermas qualifies the ideal moral perspective that he develops elsewhere—whereby individuals are always normatively bound to discursive norms, in virtue of what he argues are the necessary normative presuppositions of any communication (1984, 1990, 1994). From a less ideal political perspective, the only collective action that can reliably be steered by discursive norms is one that is regulated by a deliberatively structured constitutional framework. In a series of conceptual derivations, Habermas actually claims to "implant" the discursive ideal into the institutions and procedures of the constitutional state. The result is his domesticated deliberative model of democracy, whereby deliberative democracy necessarily presupposes as backdrop a constitutional state structure.[1]

While it is critical and indeed politically responsible to situate philosophical ideals in relation to contemporary reality, I want to suggest that Habermas' normative vision for politics steps too far away from the discursive ideal. My main objection to his domestication of the model is that it unduly minimizes the potentials for deliberative democratic activity: it neglects the discursive gains available in extra-state political contexts. So, my efforts here are, in part, an attempt to underline the pervasive force of discursive obligations. Although I resist Habermas's foundationalistic grounding of discursive norms, I do maintain that such norms ought to inform the working-out of interpersonal issues in general, and that they should structure political activity and governance that surpasses constitutional institutions. Contemporary forces of globalization lend urgency to this project: for instance, the global trade regime arguably compromises the democratic responsiveness of domestic states, making it imperative to reinforce and discursively structure extra-state and extra-constitutional avenues for political activity.

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[1] Referring to Habermas's position as a "domestication" of the deliberative paradigm may seem to neglect some of his later work, such as *The Postnational Constellation* (2001), where he considers and is relatively optimistic regarding the possibilities for "postnational" deliberative democracy. However, even in light of this more recent work, I defend my description of Habermas's deliberative model as domesticated: his postnational version of deliberative democracy essentially replicates the domestic variety, in the sense that it too hinges on the construction of a constitutional-legislative framework. That said, perhaps it would be more precise to describe Habermas's deliberative paradigm as "constitutionalized" instead of as domesticated; but in this project I use the latter terminology.

I furthermore maintain that it is realistic to expect deliberative democratic engagement and governance outside of constitutional-legislative structures. Part of this argument involves clarifying the range of normative goals toward which a deliberative model of democracy should strive, given its orienting aspiration to realize equal respect for persons. To this end, I develop and explore typically neglected normative gains that the deliberative model offers. And a further dimension of arguing for the capacity of extra-constitutuional contexts to realize discursive norms involves engaging these issues in a less abstract way than is typical in much deliberative democratic theory, so that the applicability of the ideal can be assessed concretely. Thus I will explore the transnational democratic possibilities articulated in the dissertation through a case study, looking at the important political work that discursive norms can do in the context of WTO governance and the civil society groups that target it for direct input.

Overview

The foundation one claims for the deliberative model has implications for the sorts of power relations that the model is or is not capable of transforming. In particular, foundationalistic impulses to establish the truth or universal rightness of one's normative commitments inadvertently function as exclusionary moves. Thus an important first step for my project is to elucidate and defend my non-foundationalist approach to deliberative democracy. To this end, in Chapter One I trace Habermas's infamous "quasi-transcendental," foundationalistic justification of the deliberative model. I attempt to deflate some of the motivation for such foundationalistic justifications by challenging the various dichotomies that seem typically to underwrite them. I instead conceive of the deliberative model as rooted in universally-oriented normative foundations that nonetheless remain situated and contestable. Ultimately, I offer a provisional, comparative, and contextualist validation for my pursuit of the deliberative model.

In Chapter Two I explain Habermas's domestication of the deliberative model. His arguments are complex and sometimes surprisingly strong. The bulk of the work of this chapter consists of reconstructing and critically examining the various aspects of his domestication thesis, eventually uncovering what I argue is his most compelling case for domesticating the discursive ideal. This I characterize as his weak, prudential domestication thesis: constitutional, legislative institutions are the prudentially necessary centers for contemporary political life, if we want that politics to be steered by discursive norms, and to avoid the risk of serious democratic distortions. The implication for civil society actors and groups is that they should channel demands through the filters of their respective domestic state institutions.[2]

My critique of Habermas's domestication thesis is initiated in Chapter Two but more extensively pursued in Chapter Four. In Chapter Two I suggest that his position underestimates the urgency of insisting upon discursive obligations and deliberative democracy in extra-constitutional contexts. I underline why civil society actors' transnational advocacy efforts are so important, and what is at stake in the way that Habermas's domesticated deliberative model sidelines such efforts. The other part of my critique is that Habermas's domestication of the deliberative ideal is understandably but unduly skeptical about the potentials for actually realizing discursive obligations in extra-state contexts. This argument is not pursued until Chapter Four, since it draws on the introduction of typically neglected discursive-normative goals, which I present in Chapter Three.

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[2] That is, at least for now and until there are comparably effective postnational constitutional structures in place (as well as, according to Habermas, the corresponding and requisite solidarity) (Habermas, 2006; 2001).

In Chapter Three I present a range of normative gains that can result from discursive and deliberative engagement. I argue that, in more or less extreme and explicit ways, deliberative theorists typically focus on the decision and policy outcomes directly at issue in particular deliberative forums. I also argue that this prevailing focus on directly emergent deliberative outcomes sidelines or neglects further normative gains that deliberative processes make available. I suggest a (non-exhaustive) typology of three irreducible sorts of normative benefits enabled by deliberative engagement: improvements in punctual decision outcomes; intrinsically valuable gains; and contributions to the quality of future outcomes. On my analysis, each type of normative gain becomes available in virtue of the deliberative model's demand that participants listen to others on others' own terms. I refer to this as the experience of recognizing the Other as other, and so in Chapter Three spend some time unpacking the experience of recognition.

In Chapter Four, I bring the normative framework that I develop in Chapter Three into conversation with Habermas's general skepticism regarding extra-constitutional democratic deliberation. Arguing that dialogical-deliberative processes offer a range of irreducible normative gains enables me to underline the important discursive potentials of contexts where it may, at present, be unrealistic to expect robustly deliberative punctual decision outcomes. And this abstract conceptual work is significantly enhanced by invoking a concrete case study.

Thus, in Chapter Four, I investigate the discursive-normative potentials available in the case of civil society actors' efforts to directly access the WTO. My analysis suggests that even Habermas's weaker domestication thesis, premised on the enhanced risks involved in pursuing extra-constitutional political activity, is unduly skeptical. It underestimates the extent to which such risks can be concretely managed; and it neglects a range of discursive-normative gains that are available in this context notwithstanding the democratic risks. Insofar as there are crucial normative gains at stake in this extra-state context, and insofar as direct access to the WTO by civil society groups is as urgently needed as I argue it to be, then there are good grounds for resisting Habermas's implied injunction that civil society actors and groups should channel political demands through their respective state institutions. Although perhaps unexpected, there are critical openings for the realization of discursive norms at the WTO that ought not to be prematurely dismissed.

The work of this dissertation, as described above, advances deliberative democratic theory in several respects. I theorize a non-foundationalistic and situated justification for the model that is nonetheless universally oriented; I uncover a wider range of normative gains than are typically attended to by deliberative theorists; and I reinforce the paradigm's relevance and capacities in extra-constitutional contexts. Bringing my conceptual framework to bear on a crucial context of transnational governance also contributes to deliberative democratic theory, I believe, by serving as a concrete test of the possibilities and limits of deliberative democracy. More generally, this work takes seriously the critical questions that phenomena of globalization compel political theorists to ask about the state's centrality within democratic thought.

The deliberative model of democracy, like other normative democratic theories, revolves around the norm that persons are equally deserving of respect. I begin this chapter by considering how populist, liberal, and deliberative theories of democracy each interpret and elaborate this basic value differently. After arguing, on a comparative basis, that the deliberative model has more to offer in terms of approaching the norm of equal respect for persons, I examine Jürgen Habermas's attempt to go much further and justify the deliberative model and its foundational norm of equal respect as universal and necessary.

I resist Habermas's justificatory approach, arguing instead that the deliberative theory's validity and efficacy do not require establishing its foundational value as a universal. I methodically lay out, in quite general terms, what is at stake in either pursuing or abandoning foundationalistic universals. More specifically, I examine both what is at risk in presenting operative, normative foundations as universal truths, and also what is at stake in renouncing such universals. In the course of this discussion, I identify a series of binaries that the foundationalist often seems to invoke in order to motivate her project, and I hope to deflate the urgency that foundationalistic universalism tends to claim on these bases by drawing attention to their instability as dichotomies. I conclude this part of the chapter by suggesting that, at least so far, there is nothing unduly risky about setting aside foundationalism as an artifact of untenable dichotomies. Then I suggest what it might look like to pursue a universally-oriented normative paradigm that remains situated, relating these so far quite abstract reflections back to the deliberative model of democracy.

Comparing the leading normative models of democracy

Normative theorizing about democracy presupposes or invokes as a basic norm some version of the idea that all persons equally deserve respect or should be considered moral equals.[3] Given its Kantian roots, part of what this norm underlines is the importance of each of us having some control over the shape and direction of our lives. More specifically, at least part of what equal respect for persons means—as I understand it—is acknowledging and valuing persons' capacities to reflect on their needs and interests, to make considered choices, and to articulate these for themselves.[4] As such, democratic theorists, working from this basic norm of equal respect for persons, maintain that when collective issues are at stake and must be decided, each person's perspective (whether elaborated in terms of interests, needs, or reasons, for example) deserves a fair hearing.[5] Political decisions are legitimate to the extent that they ultimately derive from democratic processes that somehow take each person's perspective into account.

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[3] Normative democratic theories are explicitly evaluative and motivated by some vision of the *proper* function of democracy. In contrast, Joseph Schumpeter, for example, claims to theorize democracy by beginning with a supposedly objective or value-free description of what democracy actually accomplishes in the modern world. Schumpeter purports to identify democracy, stripped of any idealizations, with the process free elections. However, since he also proceeds to distinguish between better and worse forms of democratic rule, Schumpeter has been criticized for presupposing some normative view about the proper function of democracy after all (Cunningham, 9-12). More generally, there is much philosophical debate on whether values inevitably inform supposedly objective descriptions.

[4] David Held, for instance, can be understood as wanting to delve deeper and specify this general value of equal respect as in turn deriving from the value of autonomy (Held 1995). But I suggest that the general norm that all persons deserve respect or are moral equals need not be parsed in terms of the norm of autonomy, which arguably tends to have less open connotations than the former.

[5] That is, 'each person within some relevant collectivity'; and, as Held alerts us, it has been taken for granted by most democratic theorists that the relevant collectivity is the state (or at least units *within* the state) (Held 1995).

This shared commitment to universal equal respect, and the corresponding elaborations of democratic processes, is variously manifested in the different genres of contemporary, western normative democratic theory. I will consider three leading normative models of democracy—populist (or, republican), liberal (or, constitutional), and deliberative.[6] And, with the many other deliberative democratic theorists, I will suggest that deliberative democracy provides the most promising understanding and elaboration of the norm of equal respect.

As maintained by populist theories, the value that all persons equally deserve respect translates into the ideal of a public empowered with the political liberty to continually govern itself. The emphasis is on enabling political freedom and public sovereignty such that (ideally all) political decisions and laws can be decided by the prevailing public will.[7] Thus, constitutional constraints on the public will are, at best, justified to the extent that they are necessary to facilitate public sovereignty (Gutmann 1993, 413; Habermas 1996a, 21-3, 27). On this conception, the value of public sovereignty takes priority over constitutional rights and structures, because it is understood to be the most straightforward and defensible manifestation of the value of universal equal respect.

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[6] Although I will try to illuminate what I take to be the most salient lines of division between these genres, I also acknowledge that, especially in practice, there is significant overlap between contemporary versions of these genres, such that any attempt to sharply and decisively distinguish them can seem artificial.

[7] Habermas goes further and attributes to the republican the understanding of public sovereignty in terms of a single, physically assembled group of people together exercising their political freedom to decide on political issues (1996a, 29). In attributing to republicans or populists a commitment to a single public that decides together for the common good, Habermas claims to have Rousseau especially in mind. I cannot speak to whether this is a plausible interpretation of Rousseau, but I do suspect that contemporary republicans or populists might take Habermas' characterization of the essential commitments of the model to be a caricature, since the awareness of the important pluralism, rather than singularity, of contemporary publics seems pervasive.

In turn, majority vote is, for populists, the most straightforward procedure for manifesting this popular rule.[8] This is because "[t]hey maintain that the only alternative, rule by only some part of the citizenry, violates the democratic value of respecting citizens as political equals" (Gutmann and Thompson 1996, 27). And without further specification, the default understanding of majority rule is as the aggregation of existing interests (33).[9]

In contrast with populists, liberal theorists of democracy interpret the value that all persons equally deserve respect as *directly* requiring the protection of the basic liberal set of political as well as private liberties—the protection of these basic rights is understood to be essential to the equal respect of individuals. According to liberal democrats, then, this cluster of basic rights requires strong constitutional protection, such that they function as limits on popular rule (Gutmann 1993, 413-14; Habermas 1996a, 21-2; Cunningham 2002, 28). On this conception, then, it is actually contrary to the value of universal equal respect (1) to make the protection of core political and personal rights contingent upon the prevailing public will; or even (2) to denigrate the core liberties by justifying their stable constitutional protection on the basis that they serve the supposedly prior value of public sovereignty. As I will discuss, according to the liberal, the problem with the above two approaches is that they leave us defenseless against "the tyranny of the majority."

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[8] A prominent example is Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989). Another example is Elaine Spitz, *Majority Rule* (Clatham, N.J.: Clatham House, 1984).

[9] This is not meant to rule out that someone with populist or republican leanings might develop a specifically deliberative elaboration of the democratic process for public decision-making. But insofar as they do, I would consider them to be deliberative democrats—to be offering a particular model of deliberative democracy. And here the point is to (charitably) outline a general populist model that is, to at least some extent, distinct from the deliberative model.

Like populists, liberals also often specify the democratic process in terms of some form of majority rule (Gutmann and Thompson 1996, 34). But for liberals, majoritarianism is constrained by the judicial enforcement and interpretation of political and personal constitutional rights that are or can be justified without reference to the value of popular rule (33). The basic personal and political liberties are justified *directly* in virtue of the norm of equal respect.

Finally, deliberative models of democracy revolve around some version of the principle that political decisions and norms, when being developed or contested, are legitimate to the extent that they emerge out of processes of uncoerced deliberation that are open to all who are affected. As such, on what basis is the deliberative model defended as the most adequate conception of normative democratic theory? More specifically, what reasons are there for maintaining that deliberative democracy offers the most promising democratic elaboration of the value of equal respect?

One advantage of the deliberative model of democracy, as maintained by certain of its central proponents (for example, Benhabib, Gutmann, and Habermas), is that it integrates both populist and liberal ideals. In particular, the deliberative democrat can agree with the liberal democrat that a basic set of political and private liberties enables equal respect, such that these basic liberal rights require constitutional protection (and will therefore, in everyday politics and legislation, limit public sovereignty). However, she also maintains that no scheme, or even conception, of liberal constitutional rights is ever absolute, or somehow beyond democratic discussion and debate (Benhabib 1996, 77-80; Bohman 1996, 17). In this sense, the deliberative democrat is also in sympathy with the populist: basic liberal rights are revisable according to democratic standards. According to the deliberative democrat, the liberal's basic individual rights are norms for the regulation of collective life that, like all such norms, must (if contested) meet the deliberative democratic principle of validation or legitimization.[10] And thus, the constitutional—and so relatively stable—protection of the basic liberties is justified on the provisional and ultimately contestable presumption that they would be, or so far have proven to be, acceptable in deliberative democratic terms.

This improves upon the liberal model of democracy. Political decisions and established norms will always involve some element of exclusion or coercion. This is because, for example, it is never likely to be the case that *all* centrally and relevantly affected persons will have the realizable opportunity to participate; and because even *if* most of the centrally affected persons or group representatives made it to the table, power dynamics would always have some impact on the deliberations (see, for instance, Tully 2004, 96). So by refusing, even at a conceptual level, to sequester any norms from the agenda of public debate—including the familiar set of Western liberal constitutional rights—the deliberative democrat claims to allow important space for the voices and perspectives of persons who may, at present, be invisible or marginalized; and thus claims to enable normative democratic theory's core value of equal respect more adequately than can the liberal. The idea here is that the liberal, by taking some norms off the agenda of public debate, cannot avoid unforeseen exclusions, and this shortfall of the liberal model seriously compromises the basic norm of equal respect.[11]

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[10] There is some disagreement among deliberative democrats on this point. Joshua Cohen, for example, maintains that personal liberties never depend upon democratic legitimization, but rather are, alongside political liberties, constitutive of the very idea of democracy (1996, 97; 1997, 83-4). And, as will be clear in the course of this dissertation, Habermas (with Benhabib following suit) is also committed to the view that democratic engagement conceptually presupposes basic public and private individual liberties. For an instructive debate on this issue, see the Rawls-Habermas exchange in *The Journal of Philosophy* (52), 1995. Although the differences between them require some discussion, I interpret both Habermas and Rawls as maintaining that private autonomy is "co-original" with and partly constitutive of democratic or public autonomy (Habermas, 130; Rawls, 163-5; both in *The Journal of Philosophy* (52), 1995).

But the deliberative democrat also distances herself from the generic populist by rejecting simple majority rule, and elaborating a more demanding ideal to guide democratic processes. Rather than political decisions being made on the basis of majority vote alone, proposed or contested political norms must emerge out of much more rigorous democratic processes or exercises in public sovereignty: they must emerge out of processes of open and uncoerced deliberation that are oriented towards understanding and agreement. This does not, however, naively neglect that, in addition, a majority vote may eventually be required to make the decision. But deliberative theorists maintain that there is an important difference between deliberation that must conclude with voting, and majoritarian processes that simply aggregate non-deliberative preferences (Cohen 1997, 75).

Unlike the populist's majoritarian criterion, the specifically deliberative criterion of legitimacy can address the liberal democrat's worry that to render basic liberal rights susceptible to democratic legitimization compromises equal respect for persons, because making them susceptible to the public will can jeopardize the liberties of minorities. The deliberative democrat can mitigate this danger because her standard of legitimization or validation demands the public and reflective defensibility of proposed communal norms. And this means that attempts by majority groups to revoke or revise the rights and privileges of minorities should be proposed within the context of uncoerced discussions that are open to those persons—including minority persons—who will be affected, and should be defended in a way that these others can understand and accept. This will be a difficult task in persuasion indeed. As such, the substantive deliberative ideal of legitimacy works against, and indeed should be invoked so as to contest, any tyranny of the majority.[12]

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[11] It is worth noting that even if in principle the liberal wants to foreclose public debate about basic liberal rights, constitutionally entrenched rights are in practice perpetually debated in the course of their application and interpretation.

In other ways, too, the deliberative model goes well beyond any system of aggregating individuals' pre-deliberative preferences. The deliberative model's collective and dialogical processes must in principle be open to all affected; in practice, this requires that participants learn to listen to, and critically engage with, differently situated others. This in turn invites individuals to enlarge and perhaps transform their own understandings and perspectives. As a process of mutual learning, deliberation can furthermore cultivate reciprocal recognition and unexpected relations of regard and respect.[13] Thus, the deliberative process differs from simple majoritarian voting in a number of ways: it aspires to decision outcomes that are *reflectively* acceptable to those affected; it promises to be educative; and it allows for unforeseen understandings, agreements and relationships to emerge during the course of the dialogical-deliberative exchanges.

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[12] This reassurance at the ideal level may nonetheless prove to be a precarious safeguard in practice. As such, the deliberative democrat may try to pursue (on deliberative democratic grounds—namely, on the grounds that it would be reflectively acceptable to those affected) safeguard mechanisms such as supermajorities, as far as changes to basic constitutional rights are concerned. This is consistent with refusing to remove basic constitutional rights from the public agenda.

[13] This capacity of deliberative interactions is the topic of my third chapter.

In summary, the three models of democracy considered here can be understood as diverging in terms of the status they attribute to basic individual rights, as well as in terms of their respective understandings and elaborations of the democratic decision-making process. I present the deliberative model as offering a much richer and more robust process than the populist and liberal models. I want to highlight that dialogical-deliberative processes facilitate and require mutual learning, and as such can transform one's self-understandings as well as understandings of and connections with others. In Chapter Three I will examine how these features of deliberative processes are not only critical to the production of quality (punctual) decision outcomes, but also make available a broader range of normative gains—gains that should be of concern to deliberative democrats since they contribute invaluably to the realization of equal respect for persons and of discursively organized interactions.

Justifying the deliberative model: Habermas' transcendental derivation

I have suggested that the norm of equal respect is a shared basis upon which contemporary practices of normative democratic theorizing draw, and indeed rely. Some key democratic theorists furthermore offer a philosophical justification for this norm. In fact, this may appear to be the only philosophically respectable thing to do. So far, my only defense of the general deliberative model of democratic governance has been comparative: I have argued that, in comparison with two alternative models, the deliberative model has the resources to best approach the value of equal respect. In this sense, the value of equal respect might be said to justify the deliberative ideal of democracy against its normative alternatives. But in order to *really* defend the deliberative model, it may seem necessary, in turn, to justify the value of equal respect itself.

In particular, it commonly seems necessary to provide the value with a "foundationalistic" justification, where this sort of justification is in general understood as the attempt to establish foundations that secure the value at issue as universally true or necessary or most rational.[14] For instance, in fulfillment of just such foundationalist expectations, Habermas attempts to "transcendentally" establish the value of equal respect as universal and necessary.

For Habermas the norm of equal respect is actually immanent in humans' everyday communicative interactions. Habermas stipulates that communicative interaction is everyday, unproblematic interaction via language where the goal is to understand each other (1990, 80ff). He explains that our communicative utterances make implicit "validity" claims about: the objective world, our sincerity as speakers, and the normative "world." In other words, our communicative utterances appeal to facts, assert our own truthfulness, and appeal to norms.

Consider, as a useful illustration, Simone Chambers's example of what it means to make an implicit *normative* validity claim in the context of everyday communication (1996, 95-6). Traffic officers establish the communicative routine of giving and taking commands. Every time a traffic officer commands drivers successfully, she implicitly invokes the normative validity claim that she should direct, and we drivers should obey. When we "hearers" voluntarily obey, we accept this normative claim. Habermas argues that we accept this on the basis of an implicit assumption that there are reasons that would satisfy us as to why she should direct and we obey. According to Habermas, a constitutive aspect of communicative interaction is that we are prepared to give reasons for our implicit validity claims if they are challenged. This is what it means to engage in communication *oriented towards understanding*, as opposed to interacting via force or strategic manipulation. Rather than single-mindedly pursuing our individual beliefs or interests, the constitutive aim of communication is to get others to understand our purposes and perspectives by reasons they can accept.

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[14] Chantal Mouffe, for example, refers to this universalistic foundationalism as the "current trend" in normative democratic theorizing, and traces it to the democratic project as formulated during the Enlightenment (1997, 24).

And so, there is a certain quality of regard or respect for others that characterizes communicative interactions—respecting others enough, on the one hand, to care whether they can understand and accept your reasoning for your validity claims, and on the other hand, to listen to and probe the reasoning behind their claims. Habermas wants to give a more precise and formal articulation to this quality of regard or respect for others (as will be outlined below). But so far the basic argument is that in everyday communications we necessarily presuppose that behind every valid norm stands a good reason.

To return to the above illustration, if you have some cause to explicitly ask for these implicitly promised reasons, and the traffic officer's reasons do not straightforwardly dispel your doubts (for example, perhaps instead of offering the reason that "I am a trained & qualified officer" she says "My friend dared me"), then it is no longer a context of unproblematic everyday communicative interaction. The everyday routine of giving and taking traffic commands breaks down, and the parties need to invoke some other process for resolving the contested norm.[15]

The parties could, for example, walk away, refusing to be involved; or use force to try and get the other to accept that there are / are not good reasons why the officer should direct and we should obey; or strategically offer rewards so as to get the other person onside. *Or* the parties could engage in a focused and formalized process of reason-giving in order to attempt more rigorously to convince each other that there are or are not good reasons for the proposed norm. Habermas argues that the only consistent option is the latter; each of the former would contradict what we inescapably presuppose whenever we engage in everyday communication—namely, that reason-giving is the way to decide on questions concerning validity claims. Insofar as we engage in everyday communication at all, we presuppose that reason-giving is the way to proceed.[16]

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[15] Another simple example that illustrates what it means to make validity claims about the objective world and about our own sincerity in the context of everyday communicative action is as follows. Suppose that you ask me where the nearest open coffee shop is, I tell you that it is at the east end of the Students' Union Building (SUB), and you thank me and go on your way. In this scenario, you accept my implicit claims about the objective world (i.e., that it is true there is a coffee shop at that location), and about my sincerity (i.e., that I'm being honest). But say you'd heard either that: (1) SUB coffee shops close early at this time of year; or (2) I have a reputation for getting kicks out of tricking people. Then you would question the relevant implicit norm—you would ask: (1) for reasons to believe that there is a coffee shop in SUB that is open; or (2) for reasons to believe my honesty. And if I cannot easily and immediately dispel your doubt, then we're no longer engaged in everyday, unproblematic communication.

[16] Habermas considers that one might want to escape this conclusion by repudiating communicative interaction altogether. But he implores us to imagine what it would mean to never engage in reason-giving for our validity claims. It would require a radical withdrawal from social activity—indeed, it would mean "regress[ing] to the monadic isolation of strategic action, or schizophrenia and suicide" (Habermas 1990, 102). As such, Habermas thinks we cannot fully and in the long run extricate ourselves from communicative action, and so cannot escape the inconsistency that characterizes any attempt to reject reason-giving as the way to proceed in the face of conflict over validity claims.

So, we should decide on contested validity claims via a process of reason-giving—namely, a more focused and formalized version of what happens in everyday communication, where we implicitly (at least promise to) decide validity claims on the basis of good reasons. Habermas refers to this more formal and idealized process as a "practical discourse," and characterizes it in terms that are supposed to clarify and more formally reconstruct what it means to decide validity claims on the basis of good reasons. Thus, ultimately, his characterization of practical discourses is supposed to offer a more precise articulation of the equal respect that the deliberative exchange of reasons trades on.

The set of procedural rules that are said to be constitutive of processes of practical discourse (and to embody the more general norm of equal respect) are as follows. (1) No one with the competency to speak and act can be excluded from the discourse. That is, all who will be affected by the issue at hand must be able to participate in the discourse. (2) Within the discourse, each participant has the equal right to question and to introduce any assertion, topic, or proposal. Each participant should also have equal opportunity to express her desires and needs, and to be heard.[17] (3) Such discursive processes should be free of coercion—both external

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[17] This can be understood as implying that the agenda of deliberative processes cannot be limited *a priori*. That is, the sorts of issues that are matters of public concern cannot be legitimately delimited in theory and prior to democratic discourses—this must be negotiated (and renegotiated) in the context of such discourses. As such, Benhabib clarifies that the deliberative model stands in opposition to a characteristically liberal rule for public and political discourse. As maintained, for example, by Bruce Ackerman, this (repudiated) rule stipulates that private ethical commitments should not be introduced into public deliberations—that only issues of justice (i.e., issues regarding the rules for mutual coexistence in complex, plural societies), and not issues of the good life, should be on the agenda of public dialogues (Benhabib 1992a, 82). Benhabib reminds us that such attempts to distinguish categorically and substantively between justice and the good; the legal and the ethical; the public and the private, are untenable. The sorts of issues that are from one person's perspective private and ethical may from another person's be public and political (84). This is evident in the established feminist criticism of how the traditional liberal relegation of domestic affairs to the

(e.g., bribes and threats) and internal (e.g., deception and manipulation) (Habermas 1990, 89). For shorthand, these procedural rules can be referred to as (1) openness, (2) freedom, and (3) fair play, and can be understood as geared towards ensuring reciprocal respect in terms of guarding against (1) exclusion, (2) unequal participation chances, and (3) coercion.

Habermas's claim is that these procedural rules are universally inescapable. The reasoning here is as follows. Since in everyday communications we necessarily presuppose that behind every valid norm stands a good reason, and since the above rules clarify and reconstruct what it means to decide validity claims on the basis of good reasons, those rules are implicitly presupposed in (the universal) everyday processes of communication—albeit in a less formal and articulate way. And so, they are presuppositions that speakers of any language must make when they communicate with each other: they are necessary conditions of possibility for communicative interaction (Habermas 1990, 131; 1994, 53). Since together the rules are said to constitute the central principle of Habermas's deliberative theory—that is, the principle that only those norms are valid that can meet with the reflective approval of all concerned in the context of a fair process of deliberation among free and equal participants—this status of transcendental necessity is also claimed for the central principle. Ultimately, Habermas claims to establish as universally inescapable foundations the norm of equal respect, as well as the discourse principle that is supposed to give that norm more precise articulation.

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private sphere effectively de-politicized domestic problems—to the extent that women exposed to domestic injustices were stripped of any political power to confront those injustices.

To be fair, in what looks like an attempt to distance his project at least somewhat from foundationalism, Habermas qualifies his transcendental derivation as "weak" or "fallible" (1990, 97). With this qualification, Habermas claims that his particular reconstruction of the inescapable normative presuppositions of communication remains open to empirical falsification. However, Habermas does not appear to question the foundationalistic expectation that there are *some* necessary presuppositions of any communication whatsoever; he just offers that his particular reconstruction of these presuppositions may not be quite right (Habermas 1996, 311-2). And even then, there is a question about Habermas's sincerity with respect to this stated openness to being proven wrong. As Michael Kelly suggests, despite claiming that they are potentially revisable, Habermas continues to assert (and operate on the understanding) that his reconstructions are transcendentally valid and necessary (1994, 388; 391).[18]

Critique of Habermas' transcendentalism: what's at stake?

I want to reject Habermas' transcendentalism or foundationalism. Alongside postmodernists like Foucault, it seems to me that attempts to secure some value or set of values as universally true or necessary or most rational eclipse their own contingency and particularity, and are ultimately at risk of being acts of domination (Foucault 1977, 150; 156). That is, since the foundationalist effectively attempts to establish some value(s) as immutable or incontestable, she silences or forecloses questions and concerns that may only be readily available to those who are differently situated. But because attempts to universalize and finalize certain values are themselves ultimately situated or informed by a particular time and place, such attempts actually work to secure the domination of some particular perspective at the expense of repressing potentially differing perspectives.[19] As Judith Butler puts it, foundations "are delimited and secured through certain exclusionary moves" (1995, 133). As such, foundationalistic projects such as Habermas's, "under the guise of promoting freedom, [may actually] extend domination" (Fraser 1994, 194). And if this is so, then even though foundations may be indispensable, it is their contestability—and not their universal necessity, finality, absolute truth, or supreme rationality—that ought to be pursued (or at least kept in mind) in order to persistently defuse domination (Butler 1995, 133; Mouffe 1997, 28).

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[18] Benhabib offers, as I will, a different and explicitly *contingent* defense of the value of equal respect. Very briefly, Benhabib defends the value of equal respect in terms of its being the distinctive and widespread intuition of our historical "horizon of modernity" (1992, 32). In offering this "historically situated" defense, Benhabib claims to want to embrace the contingency of the value of equal respect, and build her theory from there. As such, she seems to want to distance herself from the transcendentalism of Habermas's defense, which indeed appears to be fundamentally in tension with an explicitly contingent and contestable defense. Yet Benhabib also claims to draw simultaneously upon her historical defense *and* Habermas's transcendental justification of the value of equal respect (2002, 37-8; 1992, 31). This is puzzling, since it is difficult to see how to reconcile the two defenses.

This Foucauldian line of analysis has been charged with begging the foundationalist's question, in that it invokes but does not defend its own basic or foundational values—for instance, the value of non-domination. Theorists such as Nancy Fraser, Charles Taylor, and Habermas suspect Foucault's anti-foundationalism of being contradictory for just this reason—for simultaneously rejecting and drawing upon normative foundations (Bernstein 1994, 217-221). Moreover, the foundationalist critic will insist that the Foucauldian analysis implicitly employs a value that is *merely presumed* to be *universally* valid. In contrast, continues this critic, the foundationalist's project aspires to make explicit, and argumentatively establish as universal, such foundations.[20]

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[19] One of the first inspirations for my commitment to the view that, ultimately, no belief or conviction is inexorable or immune to contestation and revision is Ludwig Wittgenstein's epistemological work in *On Certainty*.

But committing this sort of logical fallacy is not really the pressing issue—foundationalists maintain that there is much more at stake in abandoning universal truths. For instance, it is not unfamiliar for foundationalistic universalism to be set up as crucial, on the basis that otherwise we will be stuck with some paralyzing form of moral relativism. In other words, without a foundationalistic justification, a value (as well as the ensuing moral or political theory) is limited or relative only to one's own specific social context. So, foundational universalism is thought to be urgent or compelling because the only alternative is undesirable—indeed dangerous, insofar as certain of these cultural contexts may be informed by oppressive or violent norms.

This dichotomous reasoning attributes to the relativist the generic view that all values and evaluative standards are relative to the particular cultural context out of which they emerge: values and evaluative standards are so inextricably informed by their particular, initiating cultural context that they pertain only to that context. In this sense, norms are culture-relative and -bound—they do not extend beyond the confines of a particular culture. On this ascribed view, we are so tightly enclosed by "our" cultural context that we have no non-imperialistic way to critically engage those who live in different contexts. When combined with any sort of ethos of non-intrusion, generic relativism thus begets an "anything goes" standpoint (Wong

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[20] Habermas can be understood as leveling this more specifically foundationalistic charge against Foucault (Kelly 1994, 366-91).

1998, 541). And so it is unsurprising that, when generic relativism is couched as the only alternative to moral universalism, the seemingly and understandably widespread resistance to "anything goes" can be harnessed to promote the urgency of foundationalistic universalism.

But it is also relatively easy to see how this underlying dichotomy is artificial. Part of the difficulty is that the dichotomy trades on a problematic view of cultures: namely, cultures as distinct and enclosed spheres. The generic relativist presupposes this view of cultures as separate and insular—indeed she must, so as to sustain the view that values and evaluative standards do not extend beyond the confines of a particular culture. The foundationalist likewise starts with this problematic view of cultures, indeed she employs it so as to propel the dichotomy that is supposed to lend urgency to her universalism. It is because she operates with a picture of the world as comprised of various distinct, enclosed cultures that universalism comes to have such urgency. Once the view that cultures are enclosed spheres is operative, then unless their insularity can be transcended by uncovering a set of universal values, cultures will "float free" as hermetic spheres, each with their own, culture-relative and –bound moral values and standards.[21]

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[21] William Connolly very briefly gestures towards this diagnosis of the foundationalist's starting point, suggesting that the foundationalist exhibits "a perhaps unconscious tendency to identify territorial cultures as if they were concentric, national cultures" (2000, 607). It may be fruitful to go even further and explore the idea that universalism, once diagnosed as accepting the relativist's starting premise, turns out (at a very abstract level of analysis) to be self-defeating: it may be that once the view of cultures as enclosed spheres is operative, the relativist will always win out. This is because she'll always have at her disposal a powerfully simple rejoinder to the foundationalist's proposed universals. The relativist will continually trace the foundationalist's proposed universals back to the enclosed cultural sphere that constitutes the foundationalist's own particular situation and point of reference. Moreover, the relativist may be able to claim an advantage on the basis that her position is much less ambitious than that of the foundationalist, who attempts to establish values that somehow bridge or cut across the distinct, enclosed spheres. It is in this sense that, in accepting the relativist's view of cultures as enclosed, spherical entities, foundationalism may be interestingly

But this view of cultures is empirically inadequate. The contemporary global situation is one of numerous transcultural and crosscutting interactions, allegiances and collaborations (Connolly 2000, 603-4). Moreover, and especially due to increased migrations, cultures are not concentrated in a specific and singular location—a group of Sunni Muslims in London, for example, may identify a stronger cultural connection (in terms of shared practices, values, etc.) with Sunni Muslims in Iraq and Canada, than with the groups of people in their vicinity. These considerations work collectively to compromise the view of cultures as enclosed spheres. The plurality of migrations and trans-cultural connections calls forth a view of cultures as dynamic, shifting, and interactive, rather than as having distinct and solid boundaries (spherical or otherwise).[22]

Understanding cultures as dynamic and interactive in turn helps to destabilize the dichotomous view that rejecting foundationalism leaves one with no option other than generic moral relativism. For instance, this more adequate view of cultures draws attention to the fact there *are* transcultural values and evaluative standards in place across the globe. Various political, social and religious organizations that draw on a transnational and transcultural member base can be understood as invoking or operating on the basis of certain transcultural values (Benhabib 2002, 32). This recognition itself seems to go some distance towards undermining generic moral relativism: if there in fact are at least some transcultural values, it is false that all values are culturally relative and bound.

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self-defeating. The line of argument here runs parallel to Michael Williams' epistemological diagnosis of skepticism with respect to our knowledge of the world (1996).

[22] In her book *The Claims of Culture*, Benhabib makes a similar, but more thorough, case for this view of cultures as interactive, dynamic and heterogeneous (2002, esp. 32-3).

Moreover, and more to the point at hand, rejecting generic relativism by acknowledging such transcultural standards does not necessarily implicate one in the foundationalistic universalism at issue thus far. One can consistently repudiate both views—one can reject the notion of there being any universally and absolutely true or most rational values, and also grant the existence of some transcultural values. Thus, even if one does not engage (or indeed rejects) the foundationalist project, it does not follow that one's politics are necessarily limited or relative only to their particular social context.

In sum, the dichotomy at issue is indefensible. The foundationalist is wrong to claim urgency for her position on the basis that what is at stake is a paralyzing moral relativism. Admittedly, probably few theorists would attempt to get universalism off the ground on this basis alone. Nonetheless, it is worth spending some time methodically deflating the dichotomy, since—at least at the level of rhetoric—indeed it is, often enough, the specter of a paralyzing moral relativism that provides a rhetorical boost to foundationalistic universalism.[23]

But, in the end, we should assume that foundationalists have a more defensible story about what is at stake in abandoning foundationalistic universals. A more convincing worry—one that can appreciate both that cultures are interactive, and that there may be certain values shared across some cultures, goes as follows. Establishing as universally true or right at least some norms or values is critical because otherwise, in cases of conflicting values and norms, it will be arbitrary which prevail. Unless we establish some universal values and standards, there will be nothing to fall back on—no fundamental basis and truth to resort to—so as to arbitrate conflicts of value. Some set of values can then claim primacy on an arbitrary basis, such as on the basis of economic or military power. Interestingly, it again looks like the foundationalist's motivating worry takes the form of a dichotomy: in the absence of at least some established universal values, it will be arbitrary which norms take the lead.[24]

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[23] Michael Walzer's moral relativism, which invokes a view of cultures as "bounded" communities—and (although this is perhaps nuanced somewhat in *Thick and Thin*) even as rather insular enclaves—often appears to lend urgency to foundationalism precisely in virtue of calling forth this specter.

This is the worry that appears to motivate Habermas's foundationalistic universalism. Habermas, recall, wants to establish the transcendental necessity of certain democratic norms—primarily, the norms of open access to and equal participation in processes of deliberation over rules for the regulation of communal life. And the point of establishing the universal necessity of these norms is, it would seem, to provide a rational and non-arbitrary basis for criticizing any opposition to them. In *Moral Consciousness and Communicative Action*, for example, Habermas "rationally reconstructs" these democratic norms as the universally inescapable conditions for communication, precisely so that he can in turn invoke their status as such—and ultimately appeal to rational consistency—in response to "the skeptic" who attempts to renounce them. Habermas argues that insofar as the skeptic engages in communication, she implicitly and inescapably presupposes the universal norms that Habermas has reconstructed. For the skeptic to renounce these norms is then inconsistent—the repudiation contradicts what the skeptic inescapably "performs" whenever she communicates (1990, 85-102).[25]

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[24] The anti-universalist Richard Rorty seems to accept this dichotomy that presents arbitrariness as only alternative to moral universalism, and so embraces moral arbitrariness (see, for e.g., the explication in Bohman 2001, 99).

To be sure, the hope is that dissenters will be rationally persuaded to accept the universal values. But, according to Habermas, even if such skeptics prove to be irrational by failing to be so persuaded, identifying certain values as universal truths allows for these to be non-arbitrarily imposed—at least upon those who live under coercive legal systems that are structured on the basis of these universal discursive values (1996, 132-193). In short, Habermas offers certain rationally incontestable normative universals that are meant to provide us with a non-arbitrary and ultimate basis to fall back on in navigating through conflicts of value, or in "managing the risk of dissension" (1996, 16).

My general diagnosis is that Habermas appears propelled by the worry that without some universal normative truths, it could be arbitrary which values prevail.[26] But the general binary at work here seems unduly constricting. There appears to be a more nuanced range of approaches available. For instance, there is a meaningful difference between values and norms that come to govern as a result of arbitrary decision, and values and norms that come to govern as a result of deliberative, democratic decision.

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[25] Habermas maintains that the skeptic cannot avoid this "performative contradiction," since no one, recall, can fully extricate themselves from communicative action.

[26] In his article "Wittgenstein and Political Philosophy," James Tully's description of Habermas's universalism might be interpreted reinforcing this diagnosis, albeit that his main focus is to warn Habermas against setting up reason in opposition to custom. One can read Tully as suggesting that Habermas's effort to rationally reconstruct normative universals is motivated by the worry that without such universal-rational foundations, we will be stuck with the uncritical acceptance of whatever customary norms we find ourselves situated within (1989, 191). And if, in the absence of universals, questions of value are ultimately only answerable in terms of the set of customs one is socialized within, the worry is that when customary practices and values come into conflict, it will be arbitrary which prevail. And so, again we arrive at the general binary "unless universals, arbitrariness."

Here I should clarify what I mean by an arbitrary decision: it is a decision made without reflection or reason. A paradigm example is a decision made on the basis of flipping a coin; another example is a decision made on the basis of raw military or economic might. And so given this connotation, as decisions become more reflective, they become less arbitrary.

Certainly, not all democratic decisions are reflective. That is, some democratically decided or enacted norms may lean towards arbitrariness in the sense of not being publicly, or indeed even privately, reflected upon and examined. But others will be more reflective, and this is precisely what a deliberative democrat aspires to enable and encourage. The deliberative democrat maintains that legitimate social norms must emerge out of processes of reflective and inclusive dialogue, wherein participants respect and listen to each other as equals, and aspire to settle upon the most publicly defensible norms. Norms materializing out of such processes are non-arbitrary in the sense of being reflected upon or reasoned through. But more than this, such norms may be said to be *radically* non-arbitrary in virtue of being extensively—i.e., *collectively*—reflected upon; they may be said to be radically non-arbitrary in virtue of being publicly defensible.[27]

Attending to this more nuanced range of approaches to deciding between conflicting norms discloses the artificiality and indefensibility of the dichotomy at issue. This is because democratically endorsed norms can take on a status that is distinct from arbitrary as well as foundational norms. Norms can be democratically decided by *and for* a particular collectivity, and as such need not make any pretense of being true or universally necessary. And this unsettles the dichotomous view that in the absence of at least some universal normative truths, it will be arbitrary which norms take the lead. Even if one does not engage (or indeed rejects) the foundationalist project, it does not necessarily follow that conflicts of value will be resolved arbitrarily. The foundationalist is wrong to claim urgency for her position on the basis that otherwise we risk being plunged into arbitrary decisionism.

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[27] There is probably a scale ranging from purely arbitrary to this sort of democratically endorsed norm. Consider, for instance, norms that are simply collectively, and perhaps unconsciously, enacted. Unlike what I am calling democratic norms, these norms are not immediately the product of public deliberation and reflection. Nonetheless, I think that there are some, albeit less clear and more tentative, grounds for maintaining that collectively enacted norms are not purely arbitrary. This is based on the suggestion that (at least in contexts where persons in general have at least some means of democratic empowerment at their disposal) we can provisionally and fallibly presume that norms that are collectively enacted over time are held in place as such because they have so far proved publicly adequate or reasonable.

In the end, this discussion's survey and diagnoses portray foundationalistic universalism as an artifact of false dichotomies. Abandoning or resisting foundationalism entails neither arbitrariness nor moral relativism. Far from being urgent, then, the suggestion is that foundationalism can be set aside. However, things are rarely that simple. A worry may persist beyond the deflation of the above dichotomies. Certain foundationalists might accept that democratically decided norms are not purely arbitrary, and still feel the urgency of isolating at least some universal normative truths. The motivating worry here is that unless these collective or democratic reflections track universally true / right values, we might decide on norms that eventually prove to be morally inadequate.

It is certainly true that even what is publicly defensible may later turn out to be inadequate. But I think that there is no way around this risk. We are indeed fallible and bereft of any "god's eye view" from which to discern absolute truths. But this is not only why the dangers associated with fallible, democratic, normative decision-making are unavoidable, it is also precisely why the dangers are arguably less than those involved in attempts to establish universal normative truths. Recalling Foucault, attempts to universalize and finalize certain values are themselves ultimately situated or informed by a particular time and place. Thus, such attempts actually work to secure the domination of some particular perspective at expense of repressing potentially differing perspectives.

Interestingly, it is this risk—the one involved in *pursuing* foundationalistic universals—that we *can* mitigate. We can decide on collective norms and values by way of processes of reflective and inclusive deliberation. And since any such deliberative process will be limited (for example, it will never be the case that all who are affected by the norm at issue are included), this way of proceeding calls for an awareness of the persistent contestability and fallibility of all such norms. I will elaborate on this deliberative democratic way of proceeding below, albeit acknowledging that this is the very sort of democratic process that the foundationalist will continue to find worrisome. Nonetheless, what I have suggested in response is that there is nothing unduly, or even unavoidably, risky in striving for or working with values that are democratically endorsed and situated.

Deliberative democracy without foundationalistic expectations

So, what does this chapter's abstract conceptual work mean specifically in terms of pursuing the deliberative theory of democracy, while resisting foundationalistic expectations? To begin, renouncing the foundationalistic impulse to establish or justify the deliberative model and its operative normative foundation as universally true, necessary, or in some absolute sense most rational does not entail paralysis when encountering critics. A non-foundationalistic deliberative paradigm can nonetheless be universally oriented; it is not necessarily limited to those who already accept its general spirit. But garnering broader support for the model must, given the paradigm's own central commitments, proceed as a dialogical, reason-giving pursuit.

This project as a whole is meant to contribute to the model's deliberative justification; so far, the reasons given for accepting the model are largely comparative. To some extent, however, I do proceed on the fallible but not uninformed presumption that the deliberative model is already widely accepted and acceptable—at least, it is the leading theory of democracy among variously situated contemporary political academics and actors. A more robust pursuit of a deliberative justification for the model would (like all deliberative processes of legitimatization) dialogically respond to concrete challenges to the norms constructing the model. But neither the character of such challenges nor the responses that would be persuasive can be fully anticipated in theory and in advance of actual interaction and dialogue. The sort of justification that the deliberative model can claim is deliberative and contextualist.

A tentative Wittgensteinian remark

Although my project as a whole does participate (broadly speaking) in a deliberative justification or legitimization of the deliberative paradigm, it makes no attempt to justify the model's fundamental norm of equal respect. Alongside

Benhabib, I operate on the presumption that, in our historical context, the value of equal respect is widely and reflectively acceptable (Benhabib 1992, 4, 32).[28] But where this norm *is* contested, the justificatory strategy to employ is, again, deliberative and contextualist.

Some may furthermore suggest that, in the particular context of contemporary normative theorizing about democracy, the value of equal respect actually does not stand in need of justification. As already proposed, those practicing normative democratic theorizing commonly rely upon equal respect as a basic value that is jointly invoked by (at least) other democratic theorists. When democratic theorists investigate, elaborate, apply, and compare conceptions of democracy, they commonly assume equal respect as a core value that is shared with (at least) other democratic theorists.[29] Many things may be debated and contested among contemporary democratic theorists, but generally not the judgment that all persons are moral equals. As Wittgenstein might put it, while engaging their practice, democratic theorists may "have plenty of doubts, but not *that*" (1969, §337).

This analysis invokes the view that every practice, conversation and action involves making *some* assumptions and accepting certain judgments as constitutive

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[28] As mentioned in footnote 16, however, attributing this insight to Benhabib is complicated by her simultaneous endorsement of Habermas's transcendental justification of equal respect and the deliberative paradigm.

[29] A good example is Gutmann and Thompson's practice of democratic theorizing in *Democracy and Disagreement*. They focus on comparing various conceptions of democracy (in terms of their respective capacities to address moral disagreements), while taking for granted that these different conceptions converge on the value of equal respect (28, 39). They self-consciously distinguish their project from the sort that attempts to provide extensive philosophical justification for the moral value of equal respect (367, footnote 33).

"rules" of the particular practice.[30] And, at least according to contextualist accounts of how we use the concepts of knowledge and justification, these rules or hinges place limits on the range of objections, challenges and doubt that can be entertained in the context of engaging the particular practice (Michael Williams 1996, 117; Stewart Cohen 1999, 61). To challenge the very judgments that get the particular practice off the ground is not to engage the practice, but rather to shift the context. For example, not entertaining doubts about the existence of the earth is a precondition for doing scientific research. Those engaged in scientific investigations (say, research in microbiology) legitimately assume or rely upon the judgment that the earth has existed for a very long time—at least in this context, the judgment does not stand in need of justification (Wittgenstein 1969, §342).

Crucially, however, to maintain that certain presuppositions may be legitimately relied upon (and do not require justification) when engaging a particular practice does not entail that those presuppositions are absolute truths, or in some other sense beyond doubt.[31] As Mouffe puts it, recognizing certain judgments as constitutive of a practice importantly does not give them any sort of final guarantee (1997, 28).[32] And this is because what functions as a legitimate presupposition in one context may in another be the object of doubt (Wittgenstein 1969, §98).[33]

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[30] This view is exemplified in, for example: Connolly 1995, 1 and (Connolly discussing Foucault) 10; Mouffe 1997, 28; Ruth Putnam 2000 (discussing Rorty), 392; Wittgenstein 1969, §343; Tully 1989.

[31] Although Rorty does not claim that democratic values like equal respect are *absolute truths*, he does sometimes seem to suggest that such values are *beyond doubt* in the sense that they never require justification (1990, esp. 282 and 286). Both sorts of attempts to secure closure or finality and non-contestability are rejected here.

[32] That is, important because of the very Foucauldian concerns with universalism that have already been mentioned.

So, perhaps the norm of equal respect is presently so widely and reflectively accepted and acceptable, at least within the broad field of democratic theory, that it functions in this context like a hinge. Then, on the Wittgensteinian account, those engaged in the practice of normative democratic theorizing can legitimately take the value of equal respect for granted—at least for now and until its status as a hinge is not sustainable. More generally, the tentative remarks here suggest the view that, as far as things stand now, theoretically pursuing and developing a justification for the norm of equal respect for persons is not necessary: there are more persistently contested issues to grapple with as contemporary democratic theorists.

And so, I take issue with the Habermas's sustained and complex efforts to provide a foundationalistic justification for the deliberative model as well as its fundamental norm of equal respect. I have offered a range of challenges to Habermas's claim to establish that norm, and the deliberative ideal that it constructs, as universally inescapable. Alternatively, I propose a comparative, non-foundationalistic, dialogical, and contextualist strategy for justifying or legitimizing the deliberative paradigm. A deliberative legitimization of the model will never establish its truth or rightness. But in the course of this chapter I have argued that this is a good thing. A deliberative and contextualist justificatory strategy, unlike a foundationalistic one, incorporates the awareness that we may have things wrong, and thereby engenders an approach to critics that is more responsive, dialogical, and thus true to the model's basic commitments.[34] Moreover, insofar as one's epistemological framing of the model has implications for the capacity of deliberative spaces to be responsive to the diversity of perspectives that might participate in them, so too it has implications for the model's capacity to facilitate recognition, and thus range of normative gains that recognition makes available. These connections between responsiveness and recognition in discursive spaces, as well as their normative significance, will be elaborated in Chapter Three, and employed in Chapter Four.

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[33] It seems to me that certain of Connolly's remarks run against this contextualist way of proceeding. Even though Connolly's overall project does invoke a contextualist account of legitimate "foundations," sometimes he seems not to distinguish between his concern to problematize any presumed *absolute* foundation, and the project of problematizing and interrogating *all* presuppositions—as though it is never really legitimate to rely on some grounds, and thus as though it might somehow be possible to interrogate all presuppositions at once (1995, 4; 33-4).

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[34] Laurie Shrage, for instance, exemplifies this more responsive sensibility in her anti-foundationalistic and "interpretive" efforts to nurture widespread agreement on values like non-domination, in particular around such issues as prostitution, adultery, and abortion (1994, 22-28). Specifically, Shrage maintains that we can legitimately pursue particular normative commitments, and contest differently situated others' normative practices, by engaging in responsive dialogue with them, wherein we make the effort to understand the values at issue in the terms that those others who invoke them understand them (23). In Chapter Three I will examine at length this notion of careful listening to others on their own terms.

In Chapter One, I outlined Habermas's foundationalistic argument to the effect that the basic deliberative or discursive norms are universally inescapable. In Habermas's later work, and with an eye to specifically political coordination, Habermas qualifies this ideal moral perspective. In *Between Facts and Norms*, he argues that given the complexity of contemporary societies, it is only or at least primarily in terms of the institutions of individual constitutional states that we can realistically expect, as well as insist, that discursive or communicative norms guide political decisions. I refer to this as Habermas's institutionalization and domestication of the deliberative ideal. The basic purpose of this chapter is to carefully and critically unpack Habermas's domestication, and lay out some concerns regarding its implications for civil society actors' extra-state or transnational advocacy efforts—efforts that "leap-frog" their domestic state institutions. I will argue for the critical importance of such extra-state political activity.

As I will flag in this chapter, in the course of Habermas's domestication of the deliberative ideal, there are moments where he appears to commit himself to the surprisingly strong view that domestic state institutions are not only the central and necessary but also the exclusive avenues for pursuing discursive normative expectations in contemporary politics. It is important and illuminating to explore the places in Habermas's text where he seems to lean towards this strong domestication, even though ultimately it is implausible that he would wholeheartedly endorse it. Much of the work of this chapter consists in sifting through the complex arguments Habermas offers in *Between Facts and Norms*, so that I can eventually reconstruct what I understand as his most compelling argument for domesticating the discursive ideal. This work is extensive: only at the end of the chapter do I uncover Habermas's most plausible argument for domestication, which is not as strong a claim as the bulk of his work in *Between Facts and Norms* (particularly his extensive conceptual derivations) might lead one to expect. His best domestication argument, I will show, is that domestic legislatures are prudentially necessary filters for deliberative democratic activity and governance, because without them there are serious risks and distortions.

I do think Habermas's weaker argument for the functional necessity and centrality of domestic constitutional states is important and needs to be taken seriously. But ultimately I will argue that even this weaker domestication of deliberative democracy is too strong: it unduly minimizes the sorts of spaces where it is possible and indeed urgent to insist upon discursive obligations, and to generate occasions of deliberative democracy. I will defend the view that such occasions of deliberative democracy are available in transnational or extra-state contexts. But the extended defense of such extra-state discursive potentials must wait until Chapter Four, since that discussion depends in part upon the introduction of a frequently sidelined discursive-normative goal, which I present in Chapter Three.

I. Habermas' Domestication

Habermas's idealized reconstruction of communicative action, as outlined in Chapter One, invites the vision of an ideal "communication community" that is unlimited and, when concerns and conflicts over validity claims arise, is self-regulating in accordance with the rule-governed processes of deliberation. "In this community," says Habermas, "the only available mechanism of self-organization is the instrument of discursive opinion and will-formation [i.e., communicative interaction and practical discourse], and by using such means the community is supposed to be able to settle all conflicts without violence" (1996, 323). This idealized communication community is governed *only* by the deliberative principle of legitimacy, which is successfully invoked whenever social and political norms and decisions for collective life are communicatively at issue (323-6). The deliberative criterion—along with its specific rules of procedure or discursive norms—is both brought to bear and adhered to in the envisaged communicative contexts not because of any sort of external compulsion, but ultimately because of the rationality of the communicators. And so, part of the vision of an ideal communication community includes communicators who are internally motivated, rather than externally compelled, to spontaneously resolve whatever social and political issues might arise in accordance with the (already presupposed) deliberative criterion of legitimacy (Habermas 1994, 54-7).

But Habermas rightly suggests that, as articulated thus far, the deliberative model stands at too great a distance from the reality of the social world that we know (1996, 325). Habermas's focus is on employing his deliberative model for the stable integration and coordination of contemporary, large, pluralistic—and, one might add, spatially located and defined—societies. He maintains that in terms of long-term stability, such societies should and can only be integrated, overall and in general, via communicative action and the discourse procedure implied therein—rather than via mediums like money and the administrative use of power (1996, 26).[35] However, the dilemma is that the integrative force of communicative action alone actually cannot be relied upon to coordinate contemporary complex societies (21). The large number of diverse individuals would need almost continually to sustain the cognitive acuteness and internal motivation required by the deliberative exchange of reasons, because in such pluralistic societies, the legitimacy of increasingly many validity claims is questioned, rather than held in place by some shared religious or metaphysical view. But this burden is too great for the purposes of coordinating a large mass of people, many of whom will succumb to varying degrees of irrationality and weakness of will (114-5). Moreover, Habermas argues that discursive norms alone would be unable to provide the necessary coordination and control of the various semi-independent "subsystems," like the economy, that contribute to complex contemporary societies. I will discuss Habermas's view on such systems shortly. For now, the key point is just that "no complex society could ever correspond to the model of purely communicative social relations" (326).

Habermas's solution to this dilemma is to invoke "the medium of law," or as he says, "the legal form." The legal form, Habermas stipulates, defines persons as the legal bearers of rights to private autonomy (1996, 119). Habermas conceives of a general set of rights, which define private autonomy, as constituting "the medium of law" as such (122, 125). He introduces this general set of rights in terms of three categories. The first comprises negative liberties, such as rights to freedom of thought, conscience, association, and bodily integrity, which ensure spheres where individuals can pursue their private ends (Habermas 1996, 123-4; Rehg 1998, 263-4). And because legal norms imply jurisdictional boundaries, the second category comprises rights that distinguish between members and nonmembers of the particular legal community, including the right to emigrate and protection from extradition (Habermas 1996, 124; Rehg 1998, 264). Finally, the third category is constituted by due process rights that enable individuals to sue for rights in the first two categories (Habermas 1996, 125; Rehg 1998, 263-4). In short, Habermas stipulates that it is this (supposedly) generic system of individual rights, which define private autonomy, that constitutes the legal code as such.[36]

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[35] Habermas suggests that people would eventually repudiate and rebel against social and political norms that are rooted in power alone rather than good reasons. (Indeed, the instability of a society integrated by norms that are put in place by power alone would seem to be unavoidable, in light of his understanding of what we presuppose whenever we communicate.)

As introduced so far, Habermas says, this general system of individual rights is incomplete. Any legal guarantees for private autonomy must simultaneously enable possible avenues for persons to exercise their authorship over those very legal guarantees (Habermas 1996, 127)—this need for authorship or participatory freedoms is fundamental to Habermas's commitment to discursive norms.[37] These participatory or discursive freedoms, given Habermas's invocation of the legal form, take the shape of formal rights to participate in political processes (126-7, 130). Specifically, the medium of law "interpenetrates" with the ideal model of purely discursive social relations, as set out by the discourse principle (121). And when the legal form and the discourse principle interpenetrate, the core discursive norms are institutionalized in terms of formal rights to participate in the process of political legislation (126-7). As William Rehg puts it, these rights "empower privately autonomous citizens to engage in collective self-governance, [such that] legal subjects [can] reflexively interpret and elaborate their civil rights, thereby becoming authors as well as addressees of law" (1998, 265). Overall, Habermas's interpenetration of the legal code with the ideal discursive principle yields the abstract system of legal guarantees not only for private but also for political autonomy.

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[36] Habermas maintains that at this stage "we do not yet have the familiar liberal basic rights" (1996, 125). Rather, "the basic rights inscribed in the legal code itself remain *unsaturated*, so to speak. They must be *interpreted* and *given concrete shape* by a political legislature in response to changing circumstances" (125). (I will outline how Habermas proposes to get from his invocation of the medium of law to the need for and proper function of a formal political *legislature* in what follows.)

Correspondingly, according to Habermas, this marriage of the discourse principle with the medium of law shifts the reference of the discourse principle, such that it is more apt to conceive of this interpenetration as giving rise to a distinct 'democratic' principle. Recall that Habermas's articulation of the discourse principle says "that the only regulations and ways of acting that can claim legitimacy are those to which all who are possibly affected could assent as participants in rational discourses" (1996, 458). For short, here I will refer to this as (D). Habermas suggests that once the legal form is invoked, the frame of reference for (D) shifts from "all who are possibly affected" to a spatially delimited community of legal or rights-bearing persons. Habermas finds it obvious that legal norms imply not only jurisdictional boundaries, but more specifically "a geographically delimited legal territory and… socially delimitable collectivity" (124). And so he proposes that the "interpenetration" of (D) with the legal form elicits a shift in reference to existing state-based associations of legally constituted citizens (124).

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[37] Another way of understanding this move is to recall that, according to Habermas, private autonomy is internally related to public autonomy (Habermas 1996, 127-9).

The general discourse principle (D) is then given a more precise specification as 'the principle of democracy': "the discourse principle acquires the legal shape of a democratic principle" (458). Specifically, the principle of democracy "states that only those statutes may claim legitimacy that can meet with the assent… of all citizens in a discursive process of legislation that in turn has been legally constituted" (110). This shift in reference from "all affected" to the citizens of a territorially finite space is essentially what Habermas claims to achieve when he proposes that "the principle of democracy derives from the interpenetration of the discourse principle and the legal form" (121).[38]

The next stage in Habermas's project of translating the ideal discursive norms into a framework whereby their normative force can be upheld for mass societies involves calling upon coercive state power. Actually, Habermas proposes that the medium of law itself entails coercive state power, claiming that the legal form presupposes and is internally related to political power (1996, 132). The general right to liberties, which constitutes the legal form as such, presupposes that those liberties can be enforced (134). More specifically, what is presupposed is the *legitimate* exercise of such power to enforce.[39]

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[38] As I will discuss a little later, I am not sure that Habermas succeeds here in conceptually deriving the necessity of his focus on existing state-based associations of citizens. Even if invoking the legal form implies that there are some jurisdictional boundaries—which is itself a contentious issue in contemporary legal scholarship—this does not seem in turn to imply that such boundaries must be understood in terms of finite geographical spaces, let alone in terms of existing territorial-state boundaries.

Habermas, recall, has fused the legal form with discursive norms so as to yield the principle of democracy. And from the principle of democracy—which, like (D) before it, ties legitimacy to public discourse—we already know that the legitimate exercise of executive authority will have to be informed by citizens' discursive or deliberative assent. This, proposes Habermas, implies the democratic idea of government by law—whereby "the collectively binding decisions of an authority… are for their part legitimated by statutes enacted… [by] the people's representative body in a procedure characterized by discussion and publicity" (1996, 135). What is required, in other words, is that the executive power "be tied to the lawmaking communicative power" (150). Habermas' proposal is that this requirement just is the idea of the constitutional state (150).

Habermas thus claims to establish that "the state becomes [conceptually] necessary as a sanctioning, organizing, and executive power… [and] not just functionally necessary" (1996, 134). The basic principles of the constitutional state—the principles of popular sovereignty (i.e., the parliamentary principle); individual legal protection (i.e., the need for an independent judiciary); legality of administration; and separation of state and society (169)—are, suggests Habermas, *implied* by the medium of law, and more specifically by the notion of legitimate law (134-5). Indeed, Habermas claims that "[t]he argument developed in *Between*

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[39] According to Habermas, "the law inherently claims normative validity" (1996, 136); so, when he claims that the law presupposes political power, he seems to take this as equivalent to the claim that legitimate law presupposes legitimate political power.

Facts and Norms essentially aims to demonstrate that there is a conceptual or internal relation, and not simply a historically contingent association, between the rule of law [that is, the constitutional state] and democracy" (449).

To this end, in *Between Facts and Norms*, Habermas spends time elaborating the general constitutional principles. He outlines how the formal structures of the constitutional state—the administration, the judiciary, and the legislature—should each be designed and interact so as to sustain a deliberative quality, and so to formulate and enact legitimate political decisions for a complex society. One of Habermas' key normative prescriptions is that these *formal* deliberative institutions (especially, or most directly, the legislature) draw from the concerns and opinions that emerge from the wider and *informal* public sphere. This is crucial to meeting the democratic principle of legitimacy. As Habermas says, "the success of deliberative politics depends… on the institutionalization of the corresponding procedures and conditions of communication, as well as on the interplay of institutionalized deliberative processes with informally developed public opinions" (1996, 298).[40]

On this model, informal actors or citizens can contribute to political coordination and the collective decisions that the formal legislature is empowered to make by attempting to influence legislative debates (1996, 135, 355).[41] Habermas maintains that as civil society actors and groups perceive societal problems within their "private life spheres," certain of these civil society actors and associations will seek to influence political decision-making by claiming to offer the "public opinion" (360-6).[42] Indeed, Habermas distinguishes between private civil society and the citizens' public sphere, and it is instructive to examine this distinction in some detail.

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[40] Benhabib broadly embraces Habermas's recommendations for implementing the deliberative ideal, including the "two-track" approach just outlined (Benhabib 2002, 115).

[41] Although the main avenue for citizens to influence political decisions is the legislature, the courts are of course also empowered to make certain political decisions, and citizens can seek influence through these channels as well.

Civil society comprises private actors and associations, whose privacy is protected by the rights guaranteeing private autonomy (Habermas 1996, 368). At least in *Between Facts and Norms*, Habermas conceptualizes civil society as the sphere centered on private life (Baxter 2002, 473-580), protected from state intrusion and supervision (Habermas 1996, 369). But allow me also to flag for later discussion that this is one of the moments where he seems to suggest more, and lean towards what I have referred to as his stronger domestication thesis. In addition to referring to the private zone as that which is protected from state intrusion, he also describes the protected private zone as enabling "liberation from the obligations of… 'communicative freedom'" (119). To this end, he claims that "we can understand the private autonomy of a legal subject essentially as the negative freedom to withdraw from the public space of illocutionary [i.e., discursive] obligations… Legally granted liberties entitle one to *drop out* of communicative action" (120). As Rehg puts it, "they define spheres of action in which individuals can confidently pursue their private ends free of others' interference and without having to justify their choices in discourse" (1998, 264). I will examine the suggested "private" liberation from discursive norms shortly.[43] For now I just want to outline Habermas's distinction between civil society and the public sphere in terms of the discursive obligations and political role of the latter.

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[42] Habermas is certainly not unaware that some actors from civil society will work for political influence even without purporting to have a public base. But here I want to lay out the way that he thinks things ought to proceed in light of his normative framework.

According to Habermas, the public sphere is a network of politically-oriented civil society actors and associations that target and want to influence state institutions. And this network should be coordinated and reproduced on the basis of discursive norms (1996, 360). The opinions and positions regarding societal issues that emerge out of civil society and become dominant in the public sphere should be reflectively acceptable to those affected (361-5; 379). The political public sphere, says Habermas, should be "carried by a public recruited from the entire citizenry" (365).

Although he calls the public sphere a communicative space, it is not entirely clear whether Habermas expects the political and social actors "using" the public sphere to *internalize* discursive norms so as to generate positions that are reflectively acceptable to the public.[44] Rather than the internalization of discursive norms, Habermas sometimes seems to suggest that the weight of discursive norms in the public sphere is centrally a matter of external compulsion—in the sense that access to the legislature demands their uptake by public sphere actors (1996, 359-366). On Habermas's model, civil society actors would recognize that legislative influence demands a convincing claim to speak for the public. As such, even if civil society actors do not internalize discursive normative commitments, the deliberatively structured state institutions would (externally) compel them to operate according to discursive norms, insofar as they want input and influence. This seems to insinuate that it is normatively acceptable for public sphere actors to have an internal orientation that is strategic rather than discursive. Ideally, the centralized role of the legislature means that discursive norms and so publicly acceptable opinions will be pursued irrespective of whether individual actors are internally oriented to do so.[45]

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[43] As a brief, preliminary remark, if Habermas means that private civil society actors are "entitle[d] to drop out of communicative action [per se]," and not just vis-à-vis the state, then he introduces a very surprising position—surprising, for instance, given his continually reinforced "quasi-transcendental" and "performative contradiction" arguments.

[44] Note that such an internalized orientation could be both conscious and unconscious: it could be due to an individual's conscious valuing of discursive norms; and it could be a more unconscious orientation, produced because of how, according to Habermas, societies progressively rationalize such that discursive expectations start to have more widespread currency in social spaces and institutions, and correspondingly within individuals.

Regardless of Habermas's final stance on the internalization of discursive norms, his position is that it is the job of the political legislature to *ensure* that "the political influence that the [public sphere] actors gain through public communication must *ultimately* rest on the resonance and indeed approval of [the] lay public" (364). This helps explain his view that public influence on decisions regarding collective political life should only be possible after the public opinion presented by public sphere actors and groups is filtered, via parliamentary debates, through the formal institutional core of the constitutional state (371). As Habermas puts it, the legislature "function[s] as a filter that sorts out issues and contributions, information, and reasons [emerging out of the informal public sphere] in such a way that only the relevant and valid inputs 'count'" (462). The parliamentary filter is required, in other words, to decipher which policies and decisions for collective life are really in the interest of society in general. As I will discuss more extensively in my reconstruction of some of Habermas's worries regarding civil society actors seeking direct access to extra-state centers of governance, the legislature is meant to guard against the risk that political influence becomes monopolized by those few groups that happen, for instance, to be in positions of social power due to wealth or other resources like organizational complexity and professionalization; or due to circumstances of location that enable arbitrarily differential access to centers of power, including the media; or even due to familiarity with dominant norms of political communication. By institutionally equalizing opportunities for political influence, the legislative filter is meant to ensure that political influence is reflective of the public, democratic will.

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[45] Habermas elsewhere describes the informal public sphere as, like civil society, "procedurally unregulated" and "anarchic" (1996, 307). Does he mean that the morally obligatory force of discursive norms is ultimately "*suspended*" for actors in the informal public sphere, as he sometimes seems to suggest that it is for private civil society actors (120)? And thus, that the contrast with civil society consists in how the discursive norms are obligatory for the public sphere in the (external) sense that access to government ideally and legitimately demands the discursive generation of public opinion?

Habermas envisions the legislature as capable of functioning as a rationalizing filter both because it should be part of a larger, deliberatively structured constitutional system, and because it should itself be structured deliberatively. Bohman and Rehg nicely summarize the deliberative requirements for legislative bodies into four principles. (1) Legislative bodies must be "porous" to the concerns and proposals that are identified, articulated, and mobilized within the informal public sphere, such that pubic opinions can inform legislative deliberations (Bohman and Rehg 2002, 42; Habermas 1996, 182). (2) This implies "certain technical conditions on the composition of legislative bodies, so as to ensure the adequate representation of views and interests" (Bohman and Rehg 2002, 42). For example, this may dictate special representation for historically marginalized groups. (3) Legislators must genuinely engage deliberative processes—processes that are regulated by the procedural rules calling for equal and non-coercive participation opportunities—such that the strongest reasons inform decisions (42). And, correlatively, (4) additional institutional mechanisms should be designed to compensate for weakness of will, self-interest, and the persistent influence of power among legislators (42).[46]

Recall Habermas's purpose here. He anticipates that, by way of his translation of the discursive ideal into the medium of law, individuals can be relieved of (much of) the cognitive and motivational burdens that are put in place by discursive norms, and complex societies can indeed be coordinated, in terms of an overarching regulative framework, by the discursive norms that are key to legitimacy. "Discourse theory," he claims, "conceives of constitutional principles as a consistent answer to the question of how the demanding communicative forms of democratic opinion- and will- formation can be institutionalized" (1996, 298). According to Habermas's analysis, the medium of law and the institutions of the constitutional state are the main if not exclusive avenues where the obligatory force of discursive norms can be manifest for contemporary politics.[47]

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[46] Bohman and Rehg do not here specify what these "additional mechanisms" might be, but some that are already familiar include: transparent processes of caucusing on specific issues; dialogue with and reporting to concerned civil society groups; dialogue with constituents, and concrete mechanisms for being held accountable to them; etc.

[47] To be clear, the sort of politics that Habermas has in mind here is the coordination and regulation of existing territorially-defined societies as wholes. But one question this chapter will raise asks: is Habermas's focus on politics as pertaining to territorially-defined societies a product of his conceptually derived domestication of the deliberative ideal, or is it an undefended presupposition of it?

II. Critique of Habermas' Domestication

What is clear and uncontroversial in Habermas's account is that discursive norms *alone* cannot be relied upon to stably integrate and coordinate large, complex societies. It is also clear that his project is meant to establish that the *central* venues where discursive obligations persist are the formal institutions of constitutional states. But what is less clear and indeed somewhat puzzling is that he sometimes seems to suggest the much stronger view that the discursive norms are (as he says) "implanted" in the legal framework and institutions of state such that, in the context of politics, they have no reliable instantiation beyond this. It sometimes seems as though Habermas's conceptual translation yields a constitutional state that entirely takes on the obligatory force of discursive norms, to the extent that individuals are internally unburdened of them. Although it would remain open to individuals to internalize discursive norms, on this strong view it would be normatively acceptable for individuals to instead internalize strategic and manipulative norms, so long as their actions are legal according to a discursive-democratic constitutional system.

This strong view is, presumably, not one that Habermas would explicitly and fully embrace. And yet, as I will discuss shortly, it seems implied by some of his claims regarding private civil society actors, and correspondingly by his conceptualization of "systemically independent spheres of media-steered interactions" (1996, 118). However, whether some of Habermas's assertions and language really do implicate him in the strong view that the state is the exclusive avenue for contemporary discursive politics, or whether he is only making a claim regarding the state's centrality to contemporary discursive politics, I will argue that his domestication goes too far. My project is to critically open up and explore further and important, often urgent, avenues for discursive politics. Even considering that Habermas's domestication is informed by a focus on the regulation of national societies as wholes, the critical concern here persists, and can be articulated as the worry that discursively regulating domestic societies is only one aspect of the discursive-democratic aspiration to have political life informed by discursive norms.

Another way of framing the difference between Habermas's strong and weaker views is as follows. The weaker view suggests that the constitutional state is a *necessary* and central institutionalization of discursive norms; the much stronger view suggests that the constitutional state is a *necessary and sufficient* and even exclusive manifestation of discursive norms as far as contemporary politics goes. But before getting into the issue of whether Habermas pursues the stronger or weaker domestication, I want to critically examine the sort of *necessity* that Habermas wants to claim for the state.

Recall that Habermas claims a conceptual, and not (as he says) "merely functional," necessity for the state. This is the sort of necessity he claims for the state, irrespective of whether he at times seems also to more strongly imply its exclusivity. It is because of the weight Habermas puts on his claim for the state's specifically *conceptual* or logical necessity—he says that this is what "[t]he argument developed in *Between Facts and Norms* essentially aims to demonstrate" (449)—that I take it to be worthwhile to spend some time critically examining it. In the end, I will argue that his attempt to establish the state's conceptual necessity is problematic, but that he can make a good case for its "functional" and contextually informed necessity.

Thus, I will ultimately set aside the claims to conceptual necessity, and go on to examine the issue of whether Habermas pursues the strong or weak domestication thesis, in either case attributing to him the more plausible, functionally- or contextually-informed grounding of the state's necessity. More precisely, I will briefly and critically flag where Habermas seems to imply, on functional grounds, the strong domestication position. But I will primarily go on to engage his contextually-driven, weaker, and more plausible domestication of the deliberative ideal.

The conceptual necessity of the constitutional state?

I have already traced in broad outline Habermas's argument in *Between Facts and Norms* that, once we invoke the form of law, the institutionalization of the deliberative ideal in the form of the principles of the constitutional state is conceptually and logically necessary. Now I will focus on certain stages of this argument that I think are particularly questionable. Habermas, recall, wants to conceptually derive his democratic principle from the discourse principle plus "the medium of law": in his words, "the principle of democracy derives from the interpenetration of the discourse principle and the legal form" (1996, 121). This proposed algorithm is, I think, a first questionable stage in Habermas's *a priori* and universalistic efforts. To begin, recall his stipulation that equal individual rights to private autonomy are implicit in the concept of the medium of law as such (119, 122, 125). Here one might wonder whether his definition of the medium of law in terms of individual liberties is indeed mapping a conceptual necessity, or is instead the product of contingent historical understandings. It seems that long before the notion of equal individual rights to private autonomy (or even, for that matter, before the concept of private autonomy itself) took root, groups of people organized themselves in terms of the medium of law. And even at this stage in history, the legal form may be operative in certain societies that do not in turn operate with the notion of individual liberties.

Habermas might reply that in such cases, a different concept of the medium of law is operative, and that as the above-mentioned (contemporary) societies eventually "rationalize," they too will understand and employ the concept of law as Habermas presents it. However, there may be a tension between Habermas's deliberative democratic commitments, and the authoritarian or paternalistic tone in this sort of response; it is at least arguable that the tie between the medium of law and equal individual rights is a matter of situated and historical association, rather than conceptual necessity. Habermas's definition of law in terms of individual rights appears especially situated and informed by his particular linguistic tradition when one considers that the German word for 'right' (i.e., 'Recht') can be translated as 'law' (Buchanan 2003, footnote 87). Habermas's definition of the medium of law in terms of rights, in other words, may be the product of his particular language, rather than a universalistic, logical or conceptual necessity.

The contingency and situatedness of Habermas's conception of the legal form is furthermore suggested by contemporary legal scholars pursuing "radical legal pluralism." When Habermas defines the legal form in terms of individual rights, he simultaneously defines law as formal and positive or enforceable (recall his discussion that the medium of law itself presupposes coercive power (1996, 132-4)). But radical legal pluralists reject precisely this singular definition of legal forms in terms of formal and positive law, instead endorsing "a plurality of legal orders" (MacDonald 1998, 69-91). Habermas might reply that his concept of the medium of law is capable of recognizing that there exists a plurality of legal forms; but that his project is just to establish the normative centrality of one. However, radical legal pluralists want to pluralize even further, such that instead of any normative hierarchy—whereby the plurality of, for instance, non-state and customary or community legal orders are supposed to be "steered" by the privileged constitutional form—there is a radically heterogeneity of legal forms. And the point seems to be that this radical, decentered pluralism of legal forms at the conceptual level has important (and typically overlooked) implications for sustaining robustly pluralistic and inclusive politics at a variety of levels.[48] So, I offer this as one illustration of the presence of alternatives to Habermas's stipulative conceptualization of the legal form in terms of positive individual rights; and I do so as part of my overall effort here to reinforce the contingency and contestability of what Habermas himself presents as conceptually necessary.

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[48] See, for instance, Ruth Buchanan, "Pluralism and Legitimacy in Transnational Governance" forthcoming in *Northern Ireland Law Quarterly*; Neil Walker, "The Idea of Constitutional Pluralism," *Modern Law Review* 65:3 (2002), 317-359; Margaret Davis, "The Ethos of Pluralism," *Sydney Law Review* 87 (2005), 27.

As a final contribution to this particular effort, I want to recall Habermas's proposal to conceptually derive his principle of democracy from the "interpenetration" of the discourse principle and the legal form. Bear in mind that to draw his democratic principle from these premises, Habermas smuggles in the presumption that the legal form presupposes a certain reference—namely, reference to persons who form a collectivity within an enclosed territorial space. But this does not seem logically necessary. Even assuming for the moment that the medium of law can be defined as equal, enforceable, individual rights, at least in principle the reference of such positive rights might extend beyond the enclosed territorial spaces that Habermas assumes. They might extend to all persons, if something resembling a global, coercive state were established—for example, a beefed-up United Nations. Or, Habermas's understanding of the general right to individual liberties could extend to globally dispersed persons, who voluntarily constitute a collectivity and agree to establish and be bound by an enforceable legal framework—one can, for example, imagine the World Social Forum consolidating its own military force and moving in this direction. Contemporary legal scholars such as Peter Fitzpatrick reinforce such alternatives by offering a "globalist" perspective on law, such that "law's integral reliance on a place of determination, such as nation, is denied. Law thence becomes truly, transcendentally, global. It assumes a free-floating efficacy" (Fitzpatrick 2001, 184, quoted in Buchanan 2003, 689). I present these extensions of positive law as logical possibilities, not as ones that I advocate. My point is just that, in either case, "the law's" frame of reference shifts beyond collectivities defined by existing state borders. And if the legal form does not necessarily presuppose reference to persons within respective state borders, then Habermas's democratic principle—which essentially articulates the shift in reference from "all affected" to "citizens of a state"—does not logically or conceptually derive from his proposed "legal form plus the discourse principle" algorithm.

In short, Habermas's claim to establish the conceptual necessity of the constitutional state trades on what *he takes to be* the singular, essential definition of "the medium of law as such"—namely, law as formal, positive, individual rights for persons within a defined territory. But each of these stipulative characterizations of the legal form arguably are not essential to the concept, but rather are informed by contingent historical understandings, liable to shift over time and place, and open to contestation (indeed, they are presently contested by contemporary legal theorists). Thus, Habermas's claim to establish—on the basis of invoking "the" concept of law—the conceptual necessity of the state for deliberative politics is problematic.

Of course, this in itself does not challenge the importance or even necessity of theorizing about the deliberative democratization of state institutions and processes. Although I will question the centrality that Habermas attributes to domestic states, I am not taking issue with the necessity of constitutional states. As will become clear in the course of my discussion, I do think that Habermas's detailed application of the deliberative ideal to constitutional states is valuable and informative for contemporary political actors, even though I do not take his general prescriptions to be *a priori* necessary.

Actually, as already indicated by my defense of non-foundationalism, I think that the value of the project increases when contingency and contestability are made explicit and attended to. Habermas's claims regarding the conceptual necessity of the state are presented so as to add a certain rational authority and universalistic force to the proposed centrality and dominance of constitutional, legal frameworks.[49] In Chapter One I argued that such *a priori* claims to truth and universality inadvertently function as exclusionary moves, and that therefore it is politically critical to acknowledge contingency and contestability. Arguably, then, Habermas's claims regarding the conceptual necessity of the state detract from what his domestication does importantly have to offer. Moreover, what I have suggested so far in this chapter is that Habermas's efforts to conceptually and logically reinforce his central focus on domestic states may actually not succeed in garnering the anticipated authority. But this still leaves room for convincing and pressing arguments regarding the functional or contextually-informed necessity and centrality of domestic state institutions, with respect to implementing discursive norms in the context of contemporary politics.

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[49] Although I acknowledge the subtlety and richness of Habermas's motivations, he appears at some level to be driven by the notion that the value of his normative-political recommendations is indexed to their distance from contingent considerations. Notice that Habermas's efforts to structure his deliberative model according to universal truths run deep: his conceptual derivation of the principles of the constitutional state ultimately starts with the basic norm of equal respect, which is itself said to be a transcendentally secure foundation. Viewed in this light, Habermas's universalistic efforts seem reminiscent of the Cartesian fantasy of a "first philosophy"—the fantasy of a castle of necessary truths built upon certainty rather than situated and shifting understandings.

The functional necessity of the constitutional state:

The strong version

Before considering what I understand to be Habermas's most plausible argument for the functional or pragmatic necessity and centrality of the constitutional state, I will flag and problematize the moments where he seems to lean towards the strong view that the state is not only (functionally) necessary but also sufficient or indeed exclusive as the venue for the political realization or approximation of discursive norms. In other words, I will briefly highlight the places where Habermas might be taken to imply that, in light of certain contemporary sociological forces or realities, constitutional structures function not only as the necessary and central but also the exclusive avenues for the pursuit of discursive norms in political contexts.

The sociological forces that I mention above are what Habermas, drawing on systems theory, refers to as "subsystems." Habermas views complex, contemporary societies as differentiated in terms of various "recursively closed, boundary-maintaining subsystems" (1996, 47), which play necessary integrative roles for contemporary society (39). These subsystems are "steered" according to different codes. For instance, the economy is steered by money; the administration by power; and some "action systems" within the sphere of everyday life and civil society—which in general are steered by ordinary language—themselves develop, and are steered by, their own specialized codes (55-6; 354; 360).[50]

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[50] The specialized systems within the sphere of everyday life and civil society that Habermas appears to have in mind include "systems" like education, the family, science, art, religion and particular ethical codes (1996, 55-6; 354; 360).

Habermas, recall, thinks that the ordinary language that is used in communicative contexts invokes and is tied to the discursive norms that ultimately constitute the deliberative ideal. In contrast, the above "specialized" and "system-specific" codes are, he claims, independent vis-à-vis discursive norms (354). Although ordinary language and discursive norms can in principle translate messages from these functionally specific media, these other media cannot in turn translate the (normatively rich) messages from ordinary language—they are themselves "deaf to messages in ordinary language" (56). Given Habermas's link between ordinary language and discursive norms, they are thus "deaf" to discursive norms. This is precisely why, Habermas seems to be suggesting here, his tight marriage of the discursive ideal with the legal form is so critical: he proposes that the system-specific media can only "listen" to the "language of law," and that as such "the discursive mode of sociation is to be implemented through the medium of law alone" (326).

On Habermas's account, the legal system—which, given that the administration is its own semi-independent system, essentially refers to the law-making system of the constitutional state—is one subsystem among the others mentioned above. But its steering medium, the "language of law," is uniquely capable of penetrating all code-specific subsystems. Law plays a unique "mediating function"; it is the only means by which discursive norms can reach the distinct systems in society (Habermas 1996, 56). As Habermas puts it: "Normatively substantive messages can circulate *throughout* society only in the language of law" (56). It is only "[t]hrough a legal system with which [the discursive ideal] remains internally coupled… [that] morality can spread to *all* spheres of action, including those systemically independent spheres of media-steered interactions that unburden actors of all moral expectations other than that of a general obedience to law" (118). On this analysis, many pragmatically necessary arenas of social life are simply "deaf" to discursive norms, and state-based law is the only medium that can recover their political currency. This suggests the very strong view that the state (i.e., state-based law) is the exclusive avenue for expecting and insisting upon discursive norms in complex, contemporary societies.

This strong domestication of the deliberative ideal is politically worrisome. If the media circulating within the subsystems are intrinsically deaf in the way Habermas seems to suggest, then so long as such spheres operate within the scope of legality, they are insulated from discursive contestations. Discursive uptake regarding economic activities, for instance, is restricted to those government agents and institutions that are fluent in, and empowered to use, "the language of law." But this is not wide enough access—as I will suggest shortly, it is often *urgent* that civil society or grassroots actors have direct channels for communicating their concerns and politicizing economic among other activities. Many pressing issues that should be politicized may only be perceived and integrally mobilized by grassroots actors themselves. So, insisting that the economic and other systems are only responsive to "the language of law" arguably has the effect of insulating such activities from too great a range of potentially urgent normative-political regulation. As the legal theorist William Forbath puts it, "insulating the economic order from democratic decision making [in the manner proposed by Habermas in *Between*

Facts and Norms] means excluding a world of political choices from the very processes that Habermas insists should govern such choices" (1998, 281).[51]

It may be important to note here that reinforcing and widening the potential for discursive uptake and expectations regarding economic activities, and so challenging the sorts of insularity that Habermas sometimes seems to invite, need not entail derailing the capitalist market. I agree with Habermas that it is pragmatically necessary to (discursively and democratically decide to) relieve of general discursive expectations certain subsystems of action, especially some range of market exchanges. But these lines are always open to negotiation, such that the pervasive force of discursive norms can at any moment be "heard" in these spheres, and advanced by a wider range of actors than those fluent in and empowered to use "the language of law."[52] And so my worry here is that certain of Habermas's suggestions to the effect that such subsystems are "hardwired" according to their own normatively "deaf" media—his remarks that they "obey their own logic and, to this extent, bar direct political interventions" (Habermas 1996, 385)—lean too far towards a dangerous de-politicization of such systems.[53]

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[51] As Young helps make salient, Habermas's systems theory-inspired account of the economy, the administrative state, and civil society as distinct spheres also problematically invokes "spatial language that suggests that society has three distinct parts that do not overlap" (2000, 160). Her very useful suggestion is that "[r]ather than think of state, economy, and associative lifeworld as distinct spheres or clusters of institutions, we should think of them as *kinds of activities*… [then] we can see how many institutions include all three activities" (160).

[52] The politicization that I am suggesting does not stop with democratically endorsing a capitalist market system. If decentralized capitalism is indeed is the sort of market system we want, say given arguments that it is "indispensable to freedom and efficiency… still one must choose among an indefinitely wide range of alternative sets of rules and rights, and of alternative arrangements for decentralized production and exchange" (Forbath 1998, 281). Moreover, even if we democratically endorse a certain free market system, that system is not then abandoned to its own logic save for basic legal avenues of regulation. As critical legal and social theorists like Duncan Kennedy and Roberto Unger suggest, there is "no such thing as… a self-regulating market order… All markets are political artifacts, based on and constituted by highly plastic cultural norms and legal rules" (Forbath 1998, 280). And as political constructs, they sustain the status of being always open to political contestation.

I would furthermore widen this potential for politicization or discursive uptake to the supposedly private civil society sphere that Habermas sometimes very puzzlingly suggests is "immunized" from such discursive norms. Habermas repeatedly claims that the subsystem of largely private everyday life and civil society is generally steered by ordinary language, and thus should be steered by discursive norms. However, some other of his descriptions of the private sphere are puzzling because they seem to suggest the opposite—namely, that this sphere is relieved of discursive obligations and expectations, because those obligations are now defined in terms of what the state can properly compel. It is as though discursive norms are "implanted" in the medium of law and institutions of state such that the law and the state entirely take on the obligatory force of discursive norms, thereby "immuniz[ing] legal subjects against the expectations of communicative freedom" (1996, 120).

As mentioned earlier, Habermas claims that the state-enforced individual liberties "unburden actors of all moral expectations other than general obedience to law" (1996, 118). This suggests the surprising view that the formal individual liberties entitle persons engaged in the subsystem of private civil society to "*drop out* of communicative action," and act on the basis of any internal orientation whatsoever, so long as those actions are legal (120). It sounds as though discursive norms are "suspended" for private individual and collective actors except insofar as they are "implanted" in the procedures of a constitutional state and can be enforced by it in terms of law. Of course, even on this puzzlingly strong view, it is always open to private individuals to orient their actions according to discursive norms. But much of his language here—like his claims regarding the discursive-normative "deafness" of specialized subsystems like the economy—is in keeping with the strong domestication thesis.

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[53] Very shortly I will clarify that I do not think Habermas would ultimately endorse this de-politicization either. But for the moment I want to continue flagging certain of his claims that have problematic implications—albeit implications that he may not himself endorse.

It is admittedly very unlikely that Habermas would "immunize" private civil society from discursive norms, such that "private" interactions between persons are immunized from discursive norms and expectations *per se* (and not just vis-à-vis the state), and normatively required to be responsive just to "the language of law." This strong view would stand at too great a remove from his established theory of communicative action, whereby discursive norms are necessarily operative for any communicative exchange (1990; 1994; 1996, 311-2). I do not think that Habermas would stand fully behind the discursive-normative "deafness" of *any* of the subsystems he discusses, despite what some of his claims imply. But it goes well beyond the purposes of this project to try and decipher precisely to what extent Habermas wants to maintain that the various subsystems are self-regulating and "deaf" to discursive norms. I have been highlighting the moments where a strong view of the state's functional necessity may be implied, in part for the purpose of clarifying a direction in which it would be politically worrisome to travel, and then to caution Habermas on some of the strong language he indeed employs. Correspondingly, a key aspect of the larger purpose of this discussion is to clarify and reinforce the general pervasiveness of discursive norms, even for complex contemporary societies; and then to explore why this is politically critical.

The general pervasiveness of discursive norms

Recall from Chapter One that, although I resist Habermas's foundationalistic grounding of discursive norms, I do maintain that such norms and obligations are pervasive and ought to inform the working-out of interpersonal or collective issues in general. I characterize the discursive ideal primarily in terms of aspiring for equal respect of persons by insisting that every affected person deserves a voice in processes of communication and deliberation regarding problematized interpersonal issues. And I maintain that this ideal ought to be pursued as fully as possible. Where norms of action and organization that affect more than one person become contested or problematized, discursive obligations and expectations come to bear.[54] This view of the pervasiveness of discursive obligations does not rule out the multiple, everyday ways in which we pursue our goals strategically. As Habermas articulates in the course of developing his theory of communicative action, the point is just that *when* modes of action affect and are challenged by others, the attempt to resolve the collective problem ought to be informed by the discursive ideal.

I have flagged several points in *Between Facts and Norms* where Habermas can seem opposed to this proposed pervasiveness. But even if Habermas is not driven by the strong view that various societal subsystems are normatively deaf, he nonetheless qualifies the pervasiveness of discursive normative expectations: his explicit purpose in *Between Facts and Norms* is to transplant the deliberative ideal into domestic state institutions and structures. So, at the very least he resists my argument that the pervasiveness of discursive norms (critically and realistically) means expecting and pursuing them as guidelines for political governance in extra-constitutional contexts. Before extensively examining what I will reconstruct as Habermas's argument against deliberative-democratic efforts and expectations in extra-state contexts, I want to quickly address what may appear to stand out in his text as further reasons for qualifying the pervasiveness of discursive normative expectations.

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[54] An easy exception, as far as I can tell, is the interactions between parents and children: since children's capacities for discursive exchange are not fully developed, it would make little sense to insist that parents are normatively obligated to discursively justify any choice that their children contest.

My aim to underline or recover the pervasiveness of discursive norms might be referred to as a sort of "moralization" of politics. In *Between Facts and Norms*, Habermas offers a critique of the "subordination of politics to morality," but it pertains specifically to Kant's particular moralization of politics (1996, 105-121). Habermas takes issue with Kant's moralization because it implies pre-given moral truths or human rights, such that legal subjects are not meaningfully the authors of such truths or rights. This particular criticism is not directed towards the sort of *discursive* moralization of politics that I am pursuing.

As for Habermasian concerns regarding a discursive moralization of politics, consider how Habermas maintains that it would severely overburden individuals to rely on discursive norms *alone* to resolve problematized interpersonal and collective political issues. But that sort of "purely communicative mode of sociation" is not my proposal here. My agenda is not to somehow do away with the critical role of democratic constitutional states. I do admit that my vision of the pervasiveness of discursive normative obligations—the vision that they ought to inform the working-out of problematized interpersonal issues as much as is possible—puts back onto individual actors some of the internal, moral burden that Habermas wants to relieve. But by my lights, the discursive model is from its inception normatively demanding on individuals, and precisely because of that makes distinctive offerings—a suggestion that I intend to clarify in the next chapter.[55]

Habermas does explicitly object to the claim that the discursive ideal ought to be pursued *as fully as possible* in complex societies—more specifically, he criticizes Joshua Cohen's claim to this effect (1996, 305). His objection here seems based on an assumption that insofar as one maintains that discursive norms ought to penetrate interpersonal issues as much as possible, one is naively invoking a republican commitment to the idea of a unified society that continually and collectively issues forth a shared discursive will. Habermas suggests that because Cohen maintains that the ideal "should be 'mirrored' in social institutions as much as possible," it "seems Cohen has not completely shaken off the idea of a society that is deliberatively steered *as a whole*" (305). I certainly agree with Habermas that this sort of holistic vision of society is problematic, given the sheer complexity, plurality, and global interactivity of contemporary societies. But I do not think such holism follows from a commitment to the pervasiveness of discursive normative obligations—the latter is compatible with an understanding of society as pluralistic and decentered.

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[55] Someone may suggest that I am hereby confusing morality and politics, but I think the line between the two is (like other socio-political issues) up for debate—which itself seems to reinforce the value of demanding or robust discursive norms.

What I do think follows from a commitment to the pervasiveness of discursive normative obligations is the importance of now pursuing discursive politics in extra-state, and not just domestic, contexts. And this is the key point that Habermas will, at least in part for good reasons, resist. So, at a minimum our difference lies in this: Habermas claims to establish, while I want to challenge, that overarching, constitutional structures are the necessary backdrop for occasions of deliberative democracy. I will refer to this as Habermas's weaker argument for the functional necessity and centrality of domestic constitutional states. Before outlining this argument, I will elaborate my perspective on why it is important, and often urgent, to normatively insist upon discursive obligations for politics in extra-state contexts.

Why the need to pursue discursive politics in extra-state contexts?

For several reasons, I think it is urgent to extend the deliberative model to extra-state contexts. If it is the case that deliberative norms can be expected primarily if not exclusively to be realized via the institutionalized procedures of constitutional states, then persons who do not live within the boundaries of such states have very dim prospects for discursive empowerment. At the very least, domesticating the deliberative ideal takes the focus off of them. And insofar as the recognition and participatory empowerment called for by discursive norms are, as argued in Chapter One, critical components of being respected by others, this disregard has the effect of de-emphasizing such persons' equal bases and need for respect from others. Attuned to this sort of disregard, some of the literature regarding the role that NGOs might play in the World Bank's aid decisions and implementation insists upon the need for other-than-state-centered avenues for political voice and power for citizens of non-democratic regimes (e.g., Edwards 2001, 3).[56] Such studies support the importance of mobilizing within transnational civil societies for direct access to international institutions and regimes. It is in precisely these sorts of transnational and extra-constitutional contexts that I want to recover and investigate the deliberative, democratic potentials.

The urgency of the proposed efforts to shape extra-state avenues for discursive empowerment may also be underlined by the unfortunate reality that even for citizens of democratic-constitutional regimes, formal empowerment does not directly translate into actual empowerment. As Nancy Fraser puts it, the actual exercise of formal constitutional rights and opportunities for influence is typically compromised by substantive social inequalities (Fraser 1992, 115 and 119). Such social inequalities, for example, frequently entail that certain people do not have the resources to access public political arenas or to mobilize their concerns; and even when they can access legislative spaces, power hierarchies and prejudices deriving from such social inequalities can be so pervasive and invisible that certain groups of people are persistently marginalized by their national legislatures.

More visibly, phenomena of globalization have arguably contributed to the undemocratic privileging of an elite segment of respective populations: namely, big business. Economies have become increasingly interpenetrated and markets increasingly deregulated (Stubbs 2000, 5). Such deregulation or liberalization, combined with the technologization of financial transactions, means that those with large amounts of capital can move it instantaneously, and thereby destabilize domestic markets. And the increasing and global deregulation of markets also means that big business can destabilize their domestic markets by moving production facilities abroad (Held 1995, 131-2). These features of neoliberal globalization in effect constrain states to cater to big business interests. As Dryzek says, "[t]he first task of all states in this [neoliberal] system is to maintain the confidence of actual and potential investors, to avoid capital flight" (2000, 29). Corporate power's capacity to threaten domestic financial stability enables it to ensure that its interests—for instance, reduced corporate taxes, and increased privatization alongside reduced social spending—get some priority on the political agenda (Baynes 1997, 227; Falk 1996, 54-6; Held 1991, 222). And this is despite the fact that big business interests are advocated by an elite few and not necessarily the wider, democratic public. So, even within democratically structured states, civil society actors and groups that need to pursue alternative interests are finding it critical to their democratic empowerment to mobilize for direct access to centers of power beyond their domestic states. More specifically, they mobilize for direct access to the international institutions and regimes, such as the WTO, NAFTA, the IMF, and the WB, that are perceived to aid in the construction and facilitation of the neoliberal globalization that underwrites illegitimate biases in favor of big business. Thus, parallel to the first concern regarding persons living under non-democratic regimes, it appears as though Habermas's view that deliberative norms can primarily (if not exclusively) be politically insisted upon in reference to existing constitutional states ultimately neglects the contemporary urgency—even for persons living under democratic regimes—of insisting upon democratic empowerment in extra-state contexts, such as civil society mobilizations for direct access to international institutions.[57]

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[56] As per Edwards and Hulme's usage, NGOs are intermediary organizations that are engaged in funding or other support to communities and other organizations; and GROs (i.e., grassroots organizations) are more local membership organizations of various kinds (1996, 1).

Moreover, consider that *numerous* contemporary and urgent political issues do not line up with the borders of existing states—issues that centrally affect persons situated *across* state borders, and that range from global warming and arms trafficking to the political implications of corporate relocations and foreign investments. These cross-border issues create complex societies of a sort: those centrally affected constitute a group that requires coordination vis-à-vis the issue at hand. And those who are centrally affected should, according to the discursive ideal, have some avenues for participating in this coordination. But given the above considerations regarding the constraints on democratic empowerment for citizens of both democratic and non-democratic states, there is good reason to think that cross-border issues often cannot be adequately dealt with by inter-state collaboration. Again, this helps underwrite my proposal that, contra Habermas, domestic state institutions should not be presented or relied upon as the only, or even always primary, avenues for insisting upon discursive-normative obligations.

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[57] The sort of direct civil society mobilizations that I am defending does not include mobilizations by groups whose sole purpose is business and profit. I have already made reference to Young's suggestion that, in distinguishing between the economy and civil society, "we should think of them as *kinds of activities*... [In particular,] [e]conomy designates market-oriented activity concerned with the production and distribution of resources, products, income, and wealth, which is constrained by considerations of profit and loss, cost-minimization, and so on" (Young 2000, 160). Drawing on Young, then, I think that profit-focused enterprise is more accurately understood as primarily a sort of economic activity than as associational or civil society activity. In turn, civil society activity is often defined in terms of being "voluntaristic." But, as Chambers clarifies, both economic and civil society activity can be considered voluntaristic; thus, Chambers suggests that the defining feature of civil society activity is its communicative nature—in civil society we want communication and discursive norms, not power or money, to coordinate action (Chambers 2002, 93-5). But since I have suggested that we can insist upon discursive norms to coordinate any problematized action, I need something more than Chambers's proposal to distinguish associational activity from economic as well as governmental activity. My working definition of civil society activity is non-governmental activity where the sole purpose is not to create profit. This intentionally expansive definition leaves room for a wide range of associations, from solidarity and / or spirituality groups; to neighborhood watch groups; to farmers associations (where the sole purpose is not profit, even though farming is a business involving economic activity); to social advocacy groups (note that these groups are the primary focus of my defense of direct NGO access to extra-state centers of governance, because they are the ones typically seeking such access). But the state / economy / civil society distinction offered here is, as Chambers articulates in reference to her own scheme, "an analytic / normative distinction that does not correspond to categorical sets of institutions, associations, and groups that we can clearly identify as being one or the other" (2002, 95).

Seen in this light, and given multiple other instances of pressing cross-border issues and globalizing forces that must be confronted, Habermas's focus on exercising discursive norms within the avenues made available by individual constitutional states seems to overemphasize the centrality of individual states in relation to the contemporary political landscape. And the less friendly version of this concern is that Habermas's domestication perpetuates histories of violence: his democratic principle, recall, shifts the discourse principle's point of reference from "those most directly affected" to "citizens of a particular state." I have just suggested that the cross-border nature of various contemporary political issues, combined with the inadequacy of inter-state attempts to deal with them, challenges this shift in reference, at least insofar as the latter reference is proposed as the central if not exclusive outer limit for deliberative democracy. And now, considering that the locations of present state borders are largely the result of historical accident or even injustice, we might further worry that Habermas's reduction inadvertently perpetuates such injustices.[58]

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[58] As articulated by Thomas Pogge, present state borders are "indelibly tainted with past unjust conquest, genocide, colonialism, and enslavement" (1994, 5).

So, although I am not contesting the contemporary importance of democratic constitutional state institutions, I have traced some important reasons for thinking that such institutions should not be presented or relied upon as the only, or even always primary, avenues for getting discursive norms to do political work. I have attempted to underscore the importance of extending or sustaining discursive expectations, particularly in contexts where civil society groups mobilize for direct access to international institutions (or at least, certain of them, as I will clarify very shortly). Overall, my suggestion is that—*in addition* to thinking about how to better realize discursive norms in domestic state institutions—it is critical to insist upon the general normative force of discursive norms, and to think seriously about how to facilitate deliberative, democratic governance in (certain) extra-state contexts.

And so my critique of Habermas may be rather modest: I challenge the purported necessity of constitutional institutions for occasions of deliberative democracy. My perhaps modest suggestion is that there is more work for discursive norms to do in contemporary political contexts than Habermas's translation of discursive norms into legal processes and constitutional structures leads us to expect. And yet, even this modest point is critical to emphasize. Recovering the pervasive normative force of discursive norms correspondingly invites us to think about how such discursive norms can best be pursued in political contexts of governance that are not constitutionally structured.[59]

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[59] It is probably clear, but may nonetheless be important to emphasize, that my defense of the discursive-democratic importance of such "leap-frog" activity is historically situated—I argue that such activity is often urgent in light of our present contingent circumstances. I am not attempting to make an ahistorical, foundationalistic prescription regarding the true nature of democratic activity.

Refining the scope

One might, however, worry that the normative work proposed here is potentially limitless. I have attempted to generalize the political reach of the discursive ideal—the ideal of pursuing persons' equal respect by insisting that every affected person deserves a voice in processes of communication and deliberation regarding problematized collective issues. I have maintained that discursive norms and obligations are pervasive and ought to inform the working-out of contested interpersonal issues in general. And so my proposal to pursue normative discursive obligations in extra-state contexts would seem to invoke *all* extra-state political contexts where issues that affect a group of people have been problematized and require coordination. This would include all targets of the advocacy efforts pursued by civil society groups. That said, this extremely broad reference is presumably narrowed somewhat by the fact that such efforts tend to persistently target many of the same extra- and inter-state institutions and organizations—ones that repeatedly assume governance roles, and especially those that are perceived to be most powerful and yet least accountable and responsive to the affected. This would include international organizations like the UN, the WB, the IMF, and increasingly the WTO. It would also include multi- and transnational corporations like Shell and Monsanto.

But I will narrow my focus to those extra-state centers of governance that have either explicitly or tacitly and by implication—in virtue of, for instance, the democratic commitments of the members that comprise them—expressed democratic allegiances. I narrow the focus in this way for reasons rooted in the non-foundationalism that I discussed in the previous chapter. Although I am not hereby retracting my commitment to the pervasive normative force of the discursive ideal, I purposely do not have any argument for the universal necessity of discursive norms. In Chapter One, I suggested that where persons or groups of persons are not oriented in favor of democratic values, the way to proceed is to engage a situated attempt to discursively persuade—rather than to draw on (and presumably enforce, if necessary) purported transcendental and / or latent universal truths. And since my present dissertation project is to elaborate a deliberative theory, rather than to engage in such situated deliberations, I will instead focus on those extra-state centers of governance that already claim some commitment to democratic values. This range centrally includes international, institutionalized negotiating forums like the UN and the WTO.[60]

Even more specifically, in Chapter Four, I will focus in on the WTO. The WTO is a key case for my study of the direct access pursued by civil society groups. As will be detailed in Chapter Four, the WTO is a particularly powerful center of governance, given its wide membership and strong enforcement capacities (Bayne and Woolcock 2003, 4; Buchanan and Long 2003, 3; Khor 1999, 42). And it claims to be democratic (World Trade Organization 2005; Shrybman 2001, 3; Khor 1999, 39). More specifically, it claims to be a neutral, member-driven organization: each member is said to have an equal voice in the decisions (World Trade Organization 2005; Jawara and Kwa 2004, 19).

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[60] The question of whether this range also includes service-provision and lending institutions like the IMF and the WB may be complicated. For example, Karen Brock and Rosemary McGee offer reason to think that the IMF and the WB do not fit within this range: they point out that, unlike the WTO, the WB and the IMF—as lending institutions—do not present themselves as democratic, neutral, member-driven organizations (2004, 17). But since my focus in Chapter Four is on the WTO, which does claim to be democratic, this issue is beyond the scope of my project.

Despite the WTO having what is portrayed as the basic elements of a democratic institution, the complaint is by now widespread and well documented that in practice the agenda and decisions of the WTO tend to be dictated by a few economically and politically powerful members. In particular, the four leading traders—the European Community, the USA, Japan, and Canada—form a powerful alliance that is frequently accused of making decisions in secret, exclusive meetings, and then employing gang-up tactics to motivate others' agreement (Brock and McGee 2004, 8; Jawara and Kwa 2004, 21). As such, the WTO is increasingly the target of public criticism—it "is now perceived as one of the main agents of globalization, in fact replacing the IMF and the World Bank as the premier global institution promoting the interests of TNCs and restricting the right and ability of governments to fulfill their national and social responsibilities" (Khor 1999, 42). In Chapter Four I will consider in some detail the importance of reinforcing channels for direct access at the WTO for civil society groups from developing as well as developed countries. Suffice it to say here that civil societies across the globe demand direct access to the WTO, and this makes it a particularly relevant case for the study of civil society "leap-frog" activism (Buchanan and Long 2003, 3).

The pragmatic necessity of the constitutional state:
The weak version

I have argued that it is urgent to insist upon and explore how to facilitate discursive norms in extra-state contexts such as civil society mobilizations for direct access to international institutions. However, Habermas and others (for example, Phil Evans (2003), Noreena Hertz (2002) and Michael Edwards (2001)) will object to these efforts on the basis of the democratic risks involved in this sort of bypassing of constitutional state institutions and procedures. As I will reconstruct below, Habermas suspects that civil society and grassroots activity are especially vulnerable to domination by those with money, luck, and social or even administrative power—forces "[that work] at cross-purposes to the orientation to mutual understanding" (Habermas 1996, 325). He maintains that such potentials for distortion puts a premium on the equalizing framework and filters that state institutions can provide (327). The suggestion seems to be that outside of such an institutional framework, the discursive prospects are dismal. And so we arrive at Habermas's weak, contextually-informed argument for the necessity and centrality of constitutional states for deliberative democracy.

Habermas's concerns regarding the acute potentials for dominant civil society and public sphere actors to reflect games of power rather than discursive, public norms are actually articulated in reference to a public sphere that targets domestic political institutions; nonetheless, his concerns are also instructive for the consideration of groups that target extra-state centers of governance. Habermas's concern is that civil society groups that can capitalize on resources like wealth, organizational complexity, knowledge and professionalization have unfair opportunities to become dominant (1996, 375). So too do civil society groups that, due to normatively arbitrary circumstances, have access or connections to, and capitalize on, administrative power (375). What is more, the mass media contributes to these unfair advantages. As Habermas puts it, the mass media prefer "to draw their material from powerful, well-organized information producers," and prefer sensational and marketable stories; the effect is that those persons and groups acting outside of large organizations like private firms with developed advertising departments are less likely to be selected by the mass media for entry into the public sphere (380). These power-plays within civil society and the public sphere generate illegitimate political influence—influence should instead be premised on the discursive norms of mutual respect, understanding, and reason-giving amongst those affected.

Habermas presumably worries that these and other infiltrations of power will play out, in amplified form, when civil society groups bypass their domestic state institutions and compete for influence at extra-state centers of governance. For instance, it is readily apparent that wealth can determine influence in international institutions and organizations: some civil society groups are better funded than others, and so have more capacity and opportunities to generate influence. Greater access to resources translates into greater organizational development, and so more capacity, for example, to pursue media attention, and to develop the (probably professionalized) skills and knowledge to which those in power are more likely to be responsive. Lucky positioning can also determine transnational political influence: groups that happen to be located in or near the (typically) Northern cities that house the powerful international institutions and organizations have more opportunities to have their voices heard; such groups are also more likely to be fluent in the styles of communication that are dominant within the international centers of power. Considerations such as these indicate that there are a host of democratic distortions that can and do accompany civil society actors' transnational advocacy efforts. Indeed, these and other risks motivate not just Habermas but also various theorists of transnational civil society to worry about the democratic risks involved in "leap-frog" activity (for example, Clark 2001, 20-4).

Given the real danger of such illegitimate forces infiltrating the extra-state-oriented actions of civil society groups, it may seem as though discursive normative gains are indeed available only when civil society actors channel their efforts through their respective (deliberatively democratic) state institutions. Constitutional states can uniquely provide a stable institutional framework for regulating and equalizing public influence on socio-political issues. The domestic legislative filter is critical: it ensures that political influence really is reflective of the public, democratic will. Thus, NGOs and more informal associations and movements in civil societies are better off channeling through their respective domestic legislatures, than aspiring for direct access to other contemporary centers of governance. Attempts to "leap-frog" constitutional channels are just too susceptible to anti-discursive forces. And this suggests the futility of my project of recovering and exploring the general normative force of discursive norms in extra-state contexts such as transnational civil society mobilizations for direct access to international institutions. It suggests the correctness of Habermas's prioritization of domestic constitutional state institutions for deliberative democratic activity—the correctness of what I am referring to as Habermas's weaker and more plausible argument for the state's functional necessity and centrality.

Prefiguring my reply to the weaker argument for the state's pragmatic necessity

I certainly agree that constitutional state institutions, where the legislative bodies indeed "remain porous, sensitive, and receptive" (Habermas 1996, 182), would do crucial work towards enabling citizens' equal opportunities for political empowerment and influence on the decisions still under the respective states' control. Yet I have argued that there are good and often politically urgent reasons for thinking that such domestic institutions should not be presented or relied upon as the only, or even always primary, avenue for deliberative democratic activity and expectations. Nonetheless, the view outlined above challenges this argument of mine by proposing that the democratic risks involved in pursuing "leap-frog" activity outweigh the democratic risks involved in sidelining such activity by domesticating the deliberative ideal.

To more adequately address this balance of risks argument, I need to further develop my defense of civil society actors' extra-state advocacy efforts. In general terms, I will argue that even Habermas's weaker domestication thesis, premised on the enhanced risks involved in pursuing extra-state political activity, is unduly skeptical. It underestimates the extent to which such risks can be concretely managed; and it neglects a range of discursive-normative gains that are available notwithstanding the democratic risks. But making this case requires a more fine-grained articulation of the goals of deliberative-democratic activity. And so I turn, in the next chapter, to this task.

Deliberative theorists importantly focus on the promise of the deliberative paradigm for legitimizing decision outcomes, or producing decisions that are more reflectively acceptable to all affected. This typically plays out as a primary focus on the decision and policy outcomes that are more or less directly at issue in the course of a particular deliberation, and sidelines those that might be at stake in the long-term future. Deliberative theorists such as Habermas do speak to the deliberative model's broader contributions and potentials to impact the quality of future decisions; but direct decision outcomes nonetheless repeatedly take center stage, as is particularly apparent when deliberative theorists consider the success or promise of a particular deliberative forum.

This orientation towards immediately emergent decisions and policies can be referred to as a "punctual" decision outcome orientation. I emphasize that this punctual orientation sidelines or even neglects further normative benefits that particular deliberative forums can make available—those that, while perhaps having no tangible impact on the more immediately emergent decisions, are either critical to the deliberative democratic quality of future decisions, or are valuable irrespective of their instrumentality for present or future deliberative outcomes.

These further normative gains become available—as do the more punctual gains—in virtue of the deliberative model's demand that participants listen to others on their own terms. I refer to this as the experience of recognizing the Other as other, and in this chapter elaborate my understanding of the experience of recognition. I suggest that recognition can manifest in a variety of ways, and outline why I think the deliberative model is well-placed to facilitate it. Then, I examine the above-mentioned range of irreducible normative gains that recognition offers, in the context of a discursive-deliberative forum; I suggest a typology of three sorts of normative gains, the first two of which pertain more to the particular deliberative forum at hand, and the last of which extends beyond that particular forum. (1) By enhancing understanding and uncovering relevant information, recognition facilitates the production of punctual decision outcomes with greater deliberative-democratic quality. (2) By fulfilling important conditions for participants' senses of integrity or self-respect, recognition makes a direct contribution to the deliberative model's foundational norm of equal respect for persons, irrespective of its impact on the quality of decision outcomes. (3) By enhancing interpersonal and inter-group relations of regard, recognition can make a variety of long-term contributions to the quality of decision and policy outcomes. Overall, my purpose in this chapter is to supplement the punctual decision-outcome orientation more standard in deliberative democratic theory, uncovering further yet also crucially transformative effects of deliberative involvement.

The "punctual" decision-outcome orientation

Recall from the discussion in Chapter One that the deliberative theory of democracy, alongside other normative models of democracy, is motivated both by the norm that all persons are equally deserving of respect, and by the view that at least part of what this must mean is that when collective issues are at stake and must be decided, each person's perspective deserves a fair hearing. Correspondingly, the different models of democracy examine the scope and nature of democratic decision-making, putting forth different understandings of its proper limits, and / or the sorts of processes capable of issuing democratically legitimate decisions. The deliberative model's particular criterion of legitimacy says that those affected by the issue at hand ought to have some opportunity to participate in processes of fair deliberation out of which the corresponding decision emerges.

Recalling the model's foundational value and motivating framework helps to make sense of the tendency for most deliberative democratic theorists to focus on decision outcomes. And this focus can be seen in deliberative theorists' common characterizations of the model as primarily concerned with the production of decision or policy outcomes with a deliberative-democratic quality or legitimacy (Benhabib 2002, 105; Bohman 1998, 401-2; Cohen 1998, 185; Cohen 1997, 73; Shapiro 2003, 122; Sunstein 1998, 156). As James Bohman puts it, "all versions of deliberative democracy" are focused primarily on elaborating a specifically deliberative understanding of legitimate political decision-making (2004, 23).

Habermas' focusing of the deliberative paradigm on decision outcomes has already been gestured at in my exegeses of his theory of communication. To briefly recall this discussion, Habermas motivates and underwrites his deliberative theory by trying to establish that, in our everyday communications, we inescapably presuppose that behind every valid norm stands a good reason. From this basis, Habermas claims to underwrite the basic principle of his deliberative theory: public norms should be decided via a fair process of reason-giving or deliberation. In other words, his main focus is on structuring collective decision-making such that good reasons (i.e., reasons that can be accepted by all affected) shape public decisions. More specifically, Habermas elaborates a theory of how communication always anticipates an exchange of reasons as the basis for deciding collective issues. And it is this "immanence" of norms regarding the deliberative exchange of reasons that justifies Habermas' deliberative model, and orients it primarily towards decision outcomes.

This principal focus on decision outcomes tends to sideline or neglect another goal at stake in deliberative democratic governance, and that is valuable "intrinsically" or irrespective of whether it enhances decision outcomes. As I will elaborate shortly, I am referring to interpersonal relations of regard among participants, which can help generate or sustain their individual flourishing or self-respect. Deliberative theorist James Johnson, for example, candidly minimizes precisely this dimension of discursive-deliberative engagement. He stipulates that "deliberation [is properly] aimed at some tangible [decision] outcome," and moreover that the sort of interpersonal relations of regard and ensuing normative contributions to individual well-being that I will highlight are beside the point—they can "at best, emerge as a by-product" (1998, ftn.55, 183).

In addition, the focus on decision outcomes habitually materializes as a focus on punctual outcomes: the decision and policy outcomes that are at stake in the course of a particular deliberative forum. When considering the success or potential of any particular deliberative context, the pivotal or most important consideration tends to be the deliberative-democratic quality of the particular decisions and policies that emerge or are anticipated to emerge out of that context. Diego Gambetta, for instance, is explicit and unapologetic in this regard. He suggests that "deliberation may simply waste precious time" in deliberative forums that do not produce more or less punctual, deliberatively legitimate decision outcomes (1998, 21). That is, where there are no tangible deliberative impacts on the particular decisions emerging out of a specific deliberative context, that deliberative context does no normative work, and indeed is counter-productive. Not only does this entirely dismiss the sort of intrinsically valuable normative gains just mentioned, it also neglects the potential for a particular deliberative process to yield less immediate normative gains that can contribute to the deliberative legitimacy of future decisions.

Other deliberative theorists are less explicit and more moderate in terms of prioritizing punctual outcomes. Habermas, for instance, is in some respects very obviously attuned to how present deliberative processes can contribute to the quality of future decisions, insofar as he maintains that such processes play a role in the gradual "rationalization of the lifeworld." According to Habermas, modern societies are, at different rates, undergoing a process of "rationalization": more and more conventions or received practices and beliefs are "passed through the filter of reflection and independent judgment," or are consciously and critically reflected upon (Habermas 1996, 95, 98). And deliberative processes themselves can help inspire this critical reflection and so contribute to the process of rationalization. In this sense then, Habermas indeed proposes a sort of non-punctual normative gain that present deliberative forums make available. And he emphasizes the significance of this non-punctual normative gain—the stability and success of the very deliberatively democratic state system that is his focus depends on "a rationalized lifeworld that meets it halfway" (1996, 302, 358-9).

That said, Habermas nonetheless does implicitly prioritize more punctual outcomes. His punctual decision-outcome orientation is revealed in his steadfast pessimism regarding non-domestic deliberative settings, and indeed by his overall project to domesticate the deliberative model. As discussed in the previous chapter, Habermas minimizes and is skeptical of non-state-centered deliberative settings largely because of his worries regarding the deliberative quality of the decisions or policies that emerge more or less promptly out of such contexts. He worries, recall, that such outcomes will be especially compromised by non-discursive forces. This in effect prioritizes more immediate policies over those that might emerge in the long-term, to the point of disregarding political contexts that can offer critical normative gains for the production of deliberatively-democratic future policies.

In short, a tacit primary orientation towards punctual outcomes is indicated by Habermas' as well as other academic deliberative democrats' tendencies to dismiss deliberative contexts as "pathological" or irrelevant when the decision or policy outcomes emerging out of that particular context are of poor deliberative quality (for another illustration of this tendency, consider Sunstein 1998, 156). As Levine, Fung, and Gastil collectively help to illuminate, the assumption here is that if a deliberative forum successfully does normative work, that work materializes in terms of deliberatively shaped and more or less punctual outcomes (Levine 2005, 280). To this end, Bohman proposes to define a political forum as deliberative only insofar as it actually influences and shapes the immediate decisions and policies at issue (2004, 35).

Simone Chambers, however, offers a notable exception. In *Reasonable Democracy* (1996), she applies her discursive-theoretical perspective to a case study: the lengthy dispute between the French and the English over language rights in Quebec. The dispute erupted in 1976 when the Parti Quebecois came to power and in 1977 passed Bill 101, which established French as the official language of Quebec (Chambers 1996, 212-5).[61] I am not going to comprehensively run through Chambers's invocation of this case: I want to draw attention to how her interpretation of the dispute over Bill 101 yields the insight that there is more going on—indeed from a political, deliberative democratic perspective—than the deliberative quality of the particular (punctual) policy at stake. Chambers very interestingly suggests that "[w]hat is really at issue in this debate was not public signs but public recognition and respect between communities" (226). And building relations of regard and respect via the interpersonal recognition that structured dialogue and deliberation facilitate is precisely what I will bring into focus. It is these relations of regard, both internal to and extending outside of particular deliberative spaces, that enable the irreducible normative gains that I have mentioned and will elaborate shortly—namely, contributions to the quality of future decisions and policies, and what I have referred to as an intrinsic gain.

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[61] Bill 101 "stated, for example, that all business must be conducted in French; that all commercial signs must be written in French; that children whose parents had not gone to primary school in English in Quebec must receive a French education" (Chambers 1996, 215).

My purpose here is not to minimize the importance and necessity of producing timely deliberatively legitimate decision outcomes, but rather to remedy the common neglect of additional normative gains at stake. Since my suggestion is that these irreducible normative gains are made available by the deliberative model's particular way of facilitating experiences of recognition, before exploring them it is necessary to spend some time unpacking what I have been referring to as the experience of recognition.

Recognizing the Other

My understanding of the phenomenon of "recognizing the Other" is informed by a wide range of theorists—from post-Freudian psychoanalysts like Jessica Benjamin, to post-Hegelian theorists of recognition like Axel Honneth and James Tully, to feminist democratic theorists such as Susan Bickford and Iris Young. As Benjamin notes, there are a number of "near-synonyms" for recognition; to recognize is, centrally, to acknowledge, to understand, to take in, to listen and to see (1988, 15-6). Recognizing the Other refers an act of attending to, being perceptive of, and being present for an other person and what they offer. It is a quality of attention that involves active or careful listening. "Listening," as Bickford explains, "involves conscious effort" (1996, 144); this effort includes resisting the impulse to straightforwardly impose our own interpretations; instead, listening is a process of quieting down enough while encountering the Other, so as to open ourselves to what they have to say. As such, active listening opens up the space for an attentive perception—that is, for recognition—of the other in their concrete particularity or specificity; it opens up "a presence that meets the Other as other" (Todd 2003, 136).

Responding to the Other by simply assimilating what they have to say into our own framework of understandings distorts listening and recognition because it makes our own selves the focus (Salverson 2000, 67-8). Thus, key to the recognition of an other is acknowledging their particularity or irreducible difference from ourselves. As Julie Salverson suggests, it is in remaining conscious of our difference from the Other that we are able to work against the tendency to assimilate, and thereby be present for and attentive to the Other (2000, 62).

Listening to and recognizing the Other "means that *for the moment* I make myself the background, the horizon" (Bickford 1996, 23). In the process of recognizing an other, the focus is on an *other*—one's self does not take center stage, but is instead slowing and quieting down enough to be receptive and attentive to the particularity of the Other. This has also been described in terms of the subduing of one's ego (Hadot 1995; Zwicky 1995). Indeed, Hadot suggests an interesting correlation between paying careful attention to the details and concrete particulars of an other, and the quieting of one's ego (Hadot 1995, 255). At any rate, recognition is more of a responsive perception of the distinct and concrete Other than a straightforwardly ego-centered pursuit.

However, the responsiveness at stake does not presume the seemingly unattainable, radical sort of openness that might be described as "a kind of self-annihilation" (Bickford 1996, 145).[62] The point, in other words, is not to expect

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[62] Bickford is critical of Simone Weil's concept of attention for demanding this kind of "self-effacement" or "profound stilling of the self" (1996, 144-6).

(implausibly) that as listeners we can somehow set aside our own rich and situated frameworks for making sense of the world. Rather, as I understand it, the point is to sustain a productive tension between the urge to assimilate and make sense solely in one's own terms, and the active effort to quiet one's own interpretive "chatter" and listen to the Other on their terms.[63]

The way I have characterized the experience of recognition so far seems to diverge from Benhabib's description of recognition as "the reversing of perspectives" (Benhabib 1992). Young articulates this distinction well: she is concerned that Benhabib's language of "reversing perspectives" connotes trying to

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[63] Nonetheless, even this call for responsiveness raises a host of issues that are critical but that cannot be pursued at length in this particular project. (1) The issue of whether and when it may be harmful for the disempowered to be open and receptive to the powerful in this way. For instance, Lugones and Spelman suggest that such openness, when it is not reciprocated, can make the vulnerable even more vulnerable (1983, 573-81). And I agree that there will be many political contexts not conducive to reciprocal listening, such that it may be urgent to, say, mobilize a protest or boycott rather than pursue dialogical listening. (2) Lugones and Spelman also make the excellent point that those who are persistently marginalized are more prepared for, and indeed adept at, this sort of listening and attentive perception, since they must—for their well-being and even survival—learn the cultures, languages, and self-conceptions of dominant groups, but the dominant do not have the same need to understand the worlds of the disempowered (1983). And (3) this raises the questions of whether my focus on listening and recognition pertains primarily to those who are privileged or empowered, and whether it is more fitting to emphasize a different range of competencies for the disempowered (for instance, as suggested by Gaventa, competencies like overcoming internalized oppressions and awareness building). My preliminary response is to suggest that my invocation of listening and recognition would indeed be importantly refined by the gaze of theorists with greater insight into how group-based power asymmetries complicate the discussion; but ultimately, even if the targeted audience for the proposals is more group-specific, the importance of them can be sustained. Nonetheless, these questions deserve further thought, and emerge out of my reading of David Kahane's review article "Pluralism, Deliberation, and Citizen Competence: Recent Developments in Democratic Theory," where he—in line with, for instance Iris Young and John Gaventa—emphasizes the importance bringing an awareness of asymmetries of group-based power to one's work on defining and cultivating citizen competences (2000, 523). (4) Finally, the issue of competences raises the further question of how the listening that is my focus is related to and distinct from the citizen competencies or character virtues that theorists of liberal citizenship discuss. Although it requires a much more sustained defense, my preliminary stance on this issue is to suggest that the capacity to listen that is at stake here is more open-ended than the typical liberal virtues of character, and remains open to different understandings and elaborations of it. At least, it is in that spirit that I advocate in advance of actual deliberation the competency of listening and responsiveness. Likewise, the liberal virtues of character, as well as whether and how a community decides to pursue them, should be understood as contestable, particular policy issues that cannot be established with any finality in advance of deliberation—but this awareness is arguably absent from much of the literature on theories of liberal citizenship and competencies (Kahane 1996).

occupy an other's particular standpoint (Young 1997, 344). Alongside Bickford, Young maintains that this reversal is impossible; correspondingly, alongside Salverson, she argues that endeavoring for this reversal actually distorts listening and recognition (346). She says: "when people obey the injunction to put themselves in the position of others, they too often put *themselves*, with their own particular experiences and privileges, in the positions they see others being in… [which] allow[s] them unknowingly to misrepresent the other's situation" (349). The crux of Young's concern with Benhabib's notion of reversing perspectives is that, ironically, "identifying… reciprocity [or, reciprocal recognition] with symmetry and reversibility of perspectives tends to close off the [very] differentiation among subjects that Benhabib wants to keep open" (343). And so, rather than describing recognition in terms of imaginatively *occupying* an other's position, we should instead emphasize *listening* to the Other as other (350).[64]

Before laying out a central range of irreducible normative gains that this type of listening and recognition can facilitate, I want to elaborate my conception of recognition by describing a range of ways that it can be manifest for the listener. It is worth noting that certain key theorists of the politics of recognition have been criticized for concentrating on the Other to be recognized, such that the practice and experience of recognition for the listener remains peripheral. Linda Nicholson, for instance, develops this critique against Charles Taylor (Nicholson 1996, 6). Thus, by canvassing a variety of ways that the experience of recognition can be manifest for the listener, I hope to make myself less vulnerable to this type of criticism.

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[64] This critique of Benhabib also, I think, pertains to Maria Lugones' language of identifying with others by "traveling" into their "world" of experiences (1990, 159-60; 178). It may also pertain to Laurie Shrage's language when she implores us to attempt "to see from within diverse human perspectives in order to understand" (1994, 8).

Various manifestations of recognizing the Other

Listening to and recognizing the Other as other can, I think, be transformative for the listener in a variety of potentially overlapping ways. It can transform one's cognitive understanding of the other person and their situation. Making the effort to listen to an other on their terms can, for instance, transform what was previously fear or even repugnance into some degree of comprehension. This shift in cognitive understanding may pertain mainly to the individual at hand, or may extend to the groups to which the individual belongs. For instance, the individual may demystify and nuance for the listener that listener's preconceived, essentialist understandings about certain groups.

The effort to recognize and listen to the Other may also uncover points of resonance—we might find certain affinities within the perspectives of other persons and groups that were previously regarded as very distant. Or, such efforts may uncover and clarify points of difference, or even of mutual unintelligibility, with the Other.[65] Either way, the experience of recognition would shift one's conceptions of the Other. Correspondingly, coming to see an other differently—and finding unexpected affinities or differences—can also clarify and transform one's conceptions of oneself. As Jane Mansbridge suggests, solitary reflection does not often clarify our own perspectives as much as does interaction with others (2003, 12). In short, reciprocal listening and recognition is a learning process wherein, as Chambers puts it, both sides can come to new self understandings (1996, 216).

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[65] I am indeed suggesting that we can distinguish between recognition and validation in the sense of positive appraisal. Recognizing and attending carefully to the nuances of an other's perspective can lead to an appreciation or understanding of their distinctiveness—but this need not, in turn, amount to a positive affirmation of their particular distinctiveness. It certainly may; but it might instead illuminate dissonance and disagreement. As such, my account of recognition seems to differ in certain significant ways from Honneth's. (And given Honneth's centrality in the recognition literature, it is worth unpacking this claim, at least briefly.) As one of the three versions of recognition that Honneth discusses, he emphasizes the importance of social recognition in the sense of an affectively charged "solidarity" or social esteem rooted in the attention to and recognition of one's particularity (1992, 255). Honneth construes his version of social recognition as a sort of validation—as a social "esteem" for one's contribution to society (6). Moreover, he maintains that

The transformative experience of listening and recognition can also have less cognitive dimensions. It can manifest as a feeling of contact with the Other, and with the identity groups that Other makes salient. Indeed, this feeling of contact might assume a variety of forms of connection, ranging from particularistic to universalistic. It may manifest as a particular bond of friendship with the Other. Such friendship may be most forthcoming when one's effort to listen to the Other on their own terms indeed uncovers points of resonance with their perspectives; but of course it is also possible for people with very dissonant perspectives to form a bond of friendship. And the feeling of contact may manifest as a particularistic sense of solidarity with those groups that are made salient via the individual Other being recognized; when preconceived notions of identity groups become more informed in virtue of contact with members of those groups, the many others

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this social esteem for one's contribution to society trades on there being a common ground of shared values from which to derive such positive appraisals (178). Maeve Cooke, for instance, concurs that reciprocal recognition is closely bound up with shared interpretations of the good life (1995, 340). I disagree: the experience of recognition that I invoke does not necessarily engage the additional act of positive appraisal, nor does it presuppose or trade on an extended framework of shared values. (Although it might be said to trade on the value that persons are equally deserving of respect—a value that I have candidly assumed since this project's inception.) My view here—that to recognize is not the same as to positively affirm—is in this respect in line with Charles Taylor's understanding of recognition (1994).

ascribed to or identifying with that group may be regarded in a new light, which might manifest as a new sense of solidarity with the group.[66]

In addition to particularistic bonds, some suggest that the feeling of contact with the Other that recognition makes available may manifest as a feeling of connection with humanity at large. This feeling of human connection has been characterized as an experience of human's "common participation in the universe" (Hadot 1995, 255); and, as an experience of the "collective coherence of all things" (Zwicky 1995, 91). The experience can be attended by a sense of the value of each thing—a sense that each diverse "piece" contributes to "the continued existence of the whole" (110). Recall that listening and recognition call upon an effort to attend to and engage with the concrete particulars and complexity of others; the idea here is that this other-focused attention to detail can open up an experience of connection with humanity.

I want to try and make further sense of this proposed link between attending to details of and recognizing an other, and feeling a connection with humanity at large. To do so, I will invoke William Connolly's discussion of the experience of contingency (acknowledging this invocation as one of many possible ways of making sense of the link). Connolly describes the experience of contingency as an appreciation of "the fundamental contingencies of things" (1995, 181)—an "appreciation that no culturally constituted constellation of identities ever deserves to define itself as simply natural, complete, or inclusive" (188). We appreciate, in other words, our own and others' fallibility, and that each of us offers just one worthy perspective among indefinitely many others.

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[66] It can also manifest as a new animosity. Moreover, even new feelings of solidarity may not be entirely "friendly"—for instance, if they trade on essentialist assumptions about the groups that effectively mis-recognize diversity within the group.

Connolly suggests cultivating this experience of contingency by introspective exercises (1993, 373). However, I think that social engagement is more promising than solitary reflection in this regard; it makes more sense to me to call upon recognition-oriented dialogue and engagement with concrete others as a key way to cultivate this experience. When we make contact with others and engage the active effort to listen to them on their own terms, we can access the sort of shift in perspective on oneself and others of which Connolly speaks: uncovering new understandings of concrete others by listening and attending to their particularity can move us to appreciate that our perspective is just one among indefinitely many other intelligible and equally contingent perspectives. And this experience of shared contingency, temporality, and perhaps vulnerability can, in turn, motivate a feeling of human connectedness. This discussion of the experience of contingency is one way of further unpacking the link between recognition and feeling a connection with humanity.

As may already be apparent, the range of manifestations of recognizing an other might be transformative in different degrees. Less deeply transformative, perhaps, is when the experience of recognition does not necessarily extend beyond the particular context at hand—the recognition is transformative in the sense of uncovering new understandings, or even a new friendship, vis-à-vis the specific Other(s) participating in the particular dialogical encounter. Beyond this, the particular dialogical encounter and experience of recognition might also have a sustained impact (or a series of such experiences might eventually generate a sustained impact). The cognitive and / or affective shifts elicited in a specific context of recognition might be deeply transformative in the sense of 'staying with one'. That is, the encounter with the Other might be internalized and have a lasting impact on one's identity and agency, such that one's approach to other persons and groups in general or at least more habitually involves some attempt to listen to and recognize them on their terms.[67] This more "deep" or lasting manifestation of the experience of recognition might, then, be referred to as an ethos of attentiveness and responsiveness to the Other. Here I am drawing on Foucault's use of "ethos" to refer to "a manner of being" (Glynos 2003, 193). More specifically, I am using "ethos" to suggest an orienting frameworks that helps inform one's way of perceiving, and of being or acting in the world.[68]

The deliberative model's capacity to promote recognition

Dialogical spaces structured according to the deliberative paradigm are, I think, well-suited for eliciting experiences of recognizing the Other as other. The deliberative model is oriented around structured dialogical spaces where participants can openly communicate and come to understand each others' particular perspectives. More specifically, the deliberative paradigm demands dialogical spaces that are structured so that participants make the effort to listen to others on their own terms.

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[67] It is because of the capacity of the experience of recognition to compel this deep sort of transformation of one's sense of self and agency that various theorists of recognition acknowledge it as "risky." As Todd says, in listening and responding to the Other, "one risks altering the very parameters of self-perception and one' place in the world" (2003, 11 and 136). And as Salverson suggests, "[t]he risk for the listener—a risk present from the first moment of the encounter with testimony—is a complete reimagining of oneself in relation to one's community" (2000, 60).

[68] Connolly has been very helpful to my attempt to link experiences of recognizing the Other as other with the cultivation of an ethos of responsiveness to the Other (1995, 26-30, 180-88, 190-93). However, as I understand it, Connolly's focus is on the cultivation of an "ethos of care for an enlarged diversity of life" (1993, 378). I am somewhat cautious regarding Connolly's articulation of the ethos at stake. My focus is not on respect for *diversity* per se, but on respect for each human as having equal worth, and so deserving to be heard and recognized. And this equal worth does not, by my lights, index directly or exclusively to the diversity of our identifications—even if humans were somehow less diverse, each would still deserve to be heard and recognized. And then, in this respect, my conception of recognition may differ from Taylor's—Lawrence Blum, for instance, has critically attributed to Taylor the view that it is somehow distinctive cultures per se that are of equal worth (1998, 57-8).

The deliberative ideal, recall, minimally requires that collective decisions be informed by public views emerging out of spaces where those affected by the decision have been able to engage in dialogue regarding their respective concerns. In general, deliberative democrats build from Habermas's articulation of the basic set of procedural, structural rules constitutive of such discursive and deliberative processes.[69] As outlined in Chapter One, these basic rules are as follows. (1) Non-exclusion: all who will be affected by the issue at hand must be able to participate in the discourse. (2) Equal participation chances: within the discourse, each participant has the equal right to question and to introduce any assertion, topic, or proposal. Each participant should also have equal opportunity to express her desires and needs, and to be heard. (3) Non-coercion (Habermas 1990, 89).

Part of the distinctiveness of the deliberative model of democracy is its demand for open spaces where affected individuals are free to offer their own voice or testimony regarding their particular concerns, and are furthermore *heard*. This can be referred to as the understanding-oriented, dialogical stage of the deliberative process. Although it is not always emphasized as such, I conceive of this understanding-oriented stage as demanding precisely the sort of attentive perception of the particularity of an other that is at stake in experiences of recognition.

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[69] Drawing from Habermas's influential articulation of these basic procedural rules need not imply accepting his transcendental justification of them as universally inescapable.

Benhabib's elaboration of the understanding-oriented stage contributes to this conception. She explicitly contends that coming to understand the perspectives of other participants involves a sensitive perception of their particularities (1992, 51): adequately understanding others' perspectives and concerns requires recognizing them in their concrete distinctness. It is not enough to understand others as effectively "generalized"—that is, as individuals who are moral equals, and generic in this equality (10). We must also seek to understand others as "concrete" and specific—and this, suggests Benhabib, requires sensitive or perceptive *listening* to others' own situated testimonies of their concerns regarding the issue at hand (52).

Thus, one can establish a link between the deliberative model and interpersonal recognition—the understanding-oriented stage of deliberative processes requires precisely the sort of attentive listening to others on their own terms that I have been characterizing as the experience of recognizing the Other as other.[70] Furthermore, one can argue that the dialogical and deliberative spaces demanded by the model are capable of actually facilitating this recognition and listening. This is in virtue of the basic procedural rules already mentioned; by way of other and more concrete procedural rules for structuring discursive-deliberative spaces; and in virtue of bringing people together for actual embodied contact.

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[70] Again, certain other deliberative democrats indeed do acknowledge and play up this sort of attentive listening; but, as I hope to make convincing in the course of this chapter, they also tend to construe its value primarily in terms of its important role in producing punctual deliberative-democratic outcomes.

The second basic procedural rule, which calls for equal participation chances, implies the more specific or concrete rule that the agenda of the dialogue not be limited *a priori*; participants are free to raise issues, questions, and concerns that emerge out of their concrete situations (Benhabib 1992, 73-5). Deliberative democrats maintain that it is key to the facilitation of equal participation chances, and in turn key for understanding others on their terms, to have a rule against legislating in advance of actual deliberative processes what can be discussed in them. Keeping discursive processes open to the potentially wide plurality of inputs is straightforwardly conducive to recognizing and listening to others on their terms, in the sense that prohibiting certain types of inputs *a priori* straight away silences, and so precludes the recognition of, those participants whose perspectives are thus prohibited.

This procedural rule for openness to the plurality of inputs should extend not only to types of issues and topics of concern, but also to types of reasons that may be offered to justify or motivate a particular position, as well as to forms of expression. To this end, Young and Lynn Sanders, for example, explicitly advocate for deliberative processes to be inclusive of a variety of forms of expression and modes of communication, including greeting, narrative, performance, rhetoric, and emotionally inflected speech (Young 2000; Sanders 1997). And Monique Deveaux and Jane Mansbridge, for instance, explicitly advocate for deliberative processes to be inclusive of reasons that are framed in terms of self-interest (Deveaux 2003; Mansbridge 2003). Rather than *a priori* ruling out such types of inputs as not sufficiently "public," these deliberative or communicative democrats remind us to employ the deliberative process itself to expose what is and what is not most acceptable to participants.

These more specific demands for openness to the plurality of inputs respond to the tendency of certain deliberative models to privilege a dispassionate, rational or logical form of expression, and to stipulate that reasons be framed in terms of "the common good." For instance, Habermas privileges dispassionate, rational expression (see especially his 1989, 45-6), and Benhabib (alongside Habermas) sometimes seems to suggest that all reasons offered in a deliberative space must be phrased in a syntax of the form "this is in the equal interest of all" (e.g., Benhabib 1996, 81-4). These constraints on form of expression, and on form as well as content of reason, can be referred to in general as "impartiality" constraints on deliberative inputs. The problem with these impartiality constraints is that impartiality, as Young puts it, "is a fiction" (2000, 63). What gets called impartial is in effect an attempt to bracket and make invisible its own particularity (Young 2000, 63, 79).[71] Thus, impartiality constraints on deliberative processes actually contribute to the concealment of always-present partialities, and thus help make more invisible the privileging of certain particularities. This reinforces, in an insidious way, the marginalization of other participants, thereby detracting from their potential to be heard and recognized. As Melissa Williams argues, the acknowledgment of reasons as reasons is always a contingent matter—it always reflects one's particular situation and interpretive framework (2000, 134). Therefore, I suggest that rather than impartiality constraints, the procedural rule for an expansive openness to the potentially wide plurality of dialogical and deliberative inputs—extending to topics, types of reasons, and modes of expression—is critical to the model's capacity to promote or facilitate the experience of recognizing the Other as other.

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[71] My view here echoes my perspective on how purported universal foundations in effect eclipse their own particularity, as discussed in Chapter One.

There are further and less formal ways in which the deliberative model is well-placed to facilitating recognition and listening. These more elusive contributions can happen in virtue of the deliberative model's bringing together of people for actual embodied contact.[72] This enables the more subtle aspects of communication, like seeing one another's facial expressions and hearing tone of voice, to make what can be very important contributions to the dialogical process of listening and clarifying one's conceptions of the Other as other. Moreover, during the course of, say, a three-day deliberative process that will advise or even govern on some issue, the participants will share meals and engage in small talk. On some accounts, these informal social interactions might be considered part of the deliberative process, and can facilitate recognition in the form of feelings of contact with the Other and with the groups that Other makes salient. And, as will be more apparent after I systematically discuss the normative gains that recognition makes available, this can, for example, enhance one's capacity to listen to further Others in the formal deliberative processes, and thereby improve the deliberative outputs. I turn now to my typology of the normative benefits that recognition offers, in the context of discursive-deliberative spaces.

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[72] I am grateful to David Kahane for offering this suggestion (alongside innumerable others).

Recognizing the Other: its potential normative work

I have suggested that the experience of listening to and recognizing the Other as other can be manifest in a variety of probably overlapping ways—in terms of cognitive and affective, as well as isolated or sustained, transformations. Listening and recognizing, in dialogical-deliberative spaces, has the capacity to transform "the hearts and minds of individuals" (Chambers 2002, 107). Now I want to explore why this potentially multifaceted experience or encounter of recognition is valuable, and to consider the range of normative work that the experience of recognition can do. Here I will survey some of the gains that recognition makes available under three headings. Recognition can (1) help produce punctual decision outcomes with greater deliberative-democratic quality; (2) fulfill conditions for participants' senses of self-respect, which is "intrinsically" valuable; (3) make a variety of long-term contributions to the quality of future decision and policy outcomes.[73] It is important to my overall project to establish that the latter two gains are distinct from and not reducible to the first.

(1) Recognition's contribution to good punctual outcomes

To begin, I will outline the role of recognition in producing the typically prioritized normative gain of punctual deliberative democratic outcomes. This role for recognition is already widely acknowledged by deliberative theorists, at least insofar as recognition is tied to the understanding-oriented stage in deliberative processes. The understanding-oriented stage of deliberation requires an attentive effort to listen to others on their own terms, which I have characterized as the experience or encounter of recognition.

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[73] The first two categories describe work that recognition does primarily within the particular deliberative setting at issue, and the last category refers to work that extends outside of the particular setting.

According to deliberative democrats, this understanding-oriented stage of deliberative processes plays a critical epistemic role in the production of good punctual outcomes: understanding how to decide a collective issue entails understanding the issue at hand and learning which decision will be most reflectively acceptable to all affected, which in turn entails understanding the perspectives of those affected. And deliberative democrats are centrally committed to the view that this requires dialogically engaging with the perspectives of those affected. As Benhabib puts it, no single individual can predict all of the information relevant to a decision that affects a range of persons (1996, 71). Thus, according to deliberative democrats, the understanding-oriented stage makes a critical contribution to the quality and legitimacy of the decisions emerging out of a particular deliberative process in virtue of uncovering the information necessary for making deliberative, reflective, and informed decisions.

Correspondingly, because recognition plays such a key role in understanding the perspectives of those affected, recognition plays a key role in producing good punctual outcomes. Admittedly, this is a fairly robust and demanding conception of the understanding-oriented stage of deliberative processes. But others too—for instance, Benhabib, Young, Bickford, Stephen White and Richard Bernstein—explicitly maintain that deliberative, democratic decision-making presupposes an understanding-oriented dialogue that engages the perspectives of those involved in a way that is highly perceptive, nuanced and recognizes them in their concrete particularity (Benhabib 1992, 9; Bernstein 1996, 1130-36; Bickford 1996, 2; Honneth 1995, 300-1; Young 1997, 341). Listening attentively to others, and thereby recognizing them in their concrete particularity, is conceived of by these and other deliberative theorists as essential to understanding the relevant perspectives enough to legitimately work out a collective issue.

(2) Recognition's contribution to individual flourishing

A further and less explored normative gain is made available by this dialogical stage of listening and recognition. Being in relations of recognition contributes to individual flourishing; this can be unpacked in many ways, but I have been referring to it as a sense of self-respect and personal integrity. Recognition involves being heard and acknowledged in one's concrete specificity, probably both as an individual and as a member of various groups. I want to propose as a working hypothesis that being in relationships of recognition helps to promote, sustain, and even initiate individual self-respect. The link between recognition and personal flourishing, parsed here in terms of self-respect, is perhaps most visible when considering the harms that mis- or non-recognition can cause. Mis- or non-recognition can impair one's sense of agency and compromise one's self-respect or personal integrity (Benjamin 1988; Honneth 1992; Meehan 1995; Taylor 1994; Tully 2000). As Honneth puts it, "the constitution of human integrity is dependent on the experience of intersubjective recognition," and as such mis- and non-recognition are forms of violence that damage self-respect and an integral sense of self" (1992, 248-9).

This view of interpersonal recognition as essential for developing and sustaining self-respect and an integral sense of agency draws on an intersubjective or relational understanding of identity as created dialogically in our relations with others, such that "the individual grows in and through the relationship to other subjects" (Benjamin 1988, 19-20; see also Taylor 1994). It is because we seem to be fundamentally constituted through our relations with others that recognition from others is so critical at an individual level. As Benjamin says, "[r]ecognition is that response from the other which makes meaningful the feelings, intentions, and actions of the self. It allows the self to realize its agency and authorship in a tangible way" (1988, 12).

My suggestion here is that if mis- or non-recognition impairs personal flourishing and self-respect, then recognition can prevent this damage, and indeed produce normative gains. Being in relationships of recognition not only forestalls acts of disrespect by "creat[ing] moments of nonviolence" (Todd 2003, 9); it helps to generate and sustain individuals' self-respect (Tully 2000, 479). And this "carries tremendous ethical weight"—contributing to personal integrity is a distinctive normative gain that recognizing the Other as other makes available (Todd 2003, 9).

Another way of showing that there is a distinctive normative gain at stake here is to suggest that interpersonal recognition makes its own valuable contribution to realizing the basic value of equal respect, irrespective of its instrumentality for producing deliberatively democratic decision outcomes. Earlier, I mentioned that normative democratic theorists interpret equal respect as requiring that each affected persons' perspective get a fair hearing in making collective decisions. Now I want to suggest that a further and also important way to realize equal respect is by offering to, and receiving from, others a quality of attentiveness and regard that I have referred to as listening and recognition. Recognition helps generate respect for persons in and of itself, and not just because it is instrumental for producing deliberative and legitimate decision outcomes. Even if the dialogical and deliberative process at hand issues a non-legitimate or negative decision outcome, the process can nonetheless prevent the harm of misrecognition, and so achieve the intrinsic normative gain of recognition and respect at the individual level. For instance, say several participants experience recognition during a process of dialogue and deliberation, and yet at the end of the deliberative process the actual decision-making is unexpectedly and illegitimately dominated by a powerful few. Despite the illegitimate decision outcome of this deliberative process, the intrinsically valuable effects of the dialogical engagement—the interpersonal recognition and corresponding contributions to individual self-respect or integrity—may survive. Thus, it is important not to measure this intrinsic normative gain in terms of formal or codified deliberatively democratic decision outcomes (Tully 2000, 469, 471, 479).[74]

It is worth noting that the intrinsically valuable normative gain at issue here can become extensively realized when recognition manifests as an internalized ethos. Insofar as the more context-specific and isolated acts of recognizing the Other within a particular deliberative space are capable of preventing the harm of depreciation and promoting self-respect for the participants, when recognition develops into a sustained ethos of responsiveness that informs one's response to others in general and beyond the particular deliberative space at stake, we can expect a much more widespread contribution to individual flourishing.

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[74] I do not mean overestimate the independent value of recognition vis-à-vis individual flourishing. Put differently, I do not want to sideline the important reality that this intrinsically valuable work that recognition can accomplish also always has material effects. As Judith Butler puts it, recognition is never "merely cultural" (Butler 1997, 4). For instance, and as will become clear when I examine the third category of normative gains that recognition offers, the various potential material effects can manifest as critical, long-term contributions to the quality of future deliberative outcomes.

(3) Recognition's various contributions to good future outcomes

A further normative gain is made available by recognition—and one that is again less explored than that of producing legitimate punctual outcomes. Recognition impacts interpersonal and inter-group understandings and relations of regard in ways that can extend outside of a particular deliberative space. Encountering and recognizing the Other in a deliberative setting—and, through the surrogate of the individual, recognizing the groups that contribute to the Other's identity and needs—generates more perceptive understandings of persons and groups that may previously have been, for example, feared or demonized. Recognition can unravel participants' stereotypes and phobias such that more humans are indeed regarded as such. And as participants leave formal deliberative settings and take their new understandings to other social contexts, they can affect broader patterns of social regard, perhaps yielding very gradual transformations. In turn, shifting social patterns of perception and valuation or regard outside of formal deliberative settings can produce a variety of long-term material effects that contribute to the quality of future decision and policy outcomes.

For example, transforming socially debilitating stereotypes and oppressive phobias itself redistributes material opportunities, including opportunities for jobs, promotions, and education (Tully 2000, 469-71). These material opportunities for employment and education in turn offer the sorts of skills, financial stability, and free time that are often critical for effective political participation and mobilization. And redistributing and extending the means for effective political participation increases the potential for more affected persons to be present and heard with respect to future collective issues and decisions. In this way, altering inter-group understandings and relations of regard within a deliberative space can spill over in ways that gradually contribute to the deliberative-democratic quality of future decision and policy outcomes. Similarly, and perhaps less elusively, participants leaving formal deliberative settings with enhanced understandings of and regard for other groups may later play an active role in transforming social institutions in ways that redistribute material benefits and opportunities.

Participants' enhanced inter-group understandings and feelings of regard can furthermore affect broader patterns of social regard in terms of helping to generate new connections, solidarities, and relations of trust between groups in society.[75] And solidarities and networks of trust can be important in nurturing and sustaining the sort of courage and motivation that it takes to participate in political contexts. Correspondingly, such informal networks create more possibilities for democratic conversations and mobilizations. And this increases the potential for more affected persons to be present and heard with respect to future collective issues and decisions. Again, then, the enhanced inter-group understandings and relations of regard generated in formal deliberative contexts can importantly impact broader social patterns of interaction and regard, in ways that promise to gradually contribute to the deliberative-democratic quality of future decision and policy outcomes.[76]

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[75] This can play out in terms of the new social connections that the participant herself might pursue. And it can, for instance, play out in terms of motivating the participant to go home and raise her children in ways reflective of her enhanced inter-group understandings, affecting how this next generation relates to others, as well as the informal networks of trust to which they will contribute.

The normative work described here is not reducible to, or measurable in terms of, the normative benefit of deliberatively-democratic punctual outcomes. And this is important to emphasize because of the tendency to neglect or even dismiss the deliberative-democratic potentials inhering in political contexts where punctual, deliberatively-democratic outcomes are not forthcoming or realistically expected. This is a significant neglect to rectify: a deliberative process that has no perceptible effect on the more or less punctual decision outcomes may nonetheless have critical impacts on the quality of informal interpersonal and inter-group relations, in ways that extend beyond the formal deliberative context and will affect the quality of future decisions and policies. As Bickford puts it, "even if [the deliberative process does] not change the outcome of that particular political action, [it can] still open up a set of possibilities that continue to reverberate in the world" (Bickford 1996, 173).

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[76] When I speak of enhanced interpersonal and inter-group relations of regard, I am not assuming or even hoping that everyone will thereby get along more peacefully. Recognition and respect can be agonistic. To be sure, the sort of listening and regard that I refer to has the potential to increase disagreement and conflict. As more voices and perspectives are taken seriously, more issues may be problematized and brought to the political table. And once at the table, if more perspectives are taken seriously, it may be that more disagreement and conflict are uncovered.

A friendly amendment?

In claiming to advance deliberative theory by underscoring a wider range of normative gains than are typically attended to by deliberative theorists, I take myself to be offering a friendly amendment to the theory. Deliberative democratic theory is a response to the necessity of making decisions or resolving disputes for groups of people; as such, working to produce more or less punctual decision outcomes that have a deliberative-democratic quality is central and critical. This I do not contest. Rather, what I have criticized is the tendency for this central and critical focus to play out as a relative neglect of further normative gains that are also importantly at stake in political contexts—to the extent that attention is diverted from contexts in which punctual outcomes with a deliberative-democratic quality are not forthcoming, but where significant strides could be made towards realizing the further normative gains that I have emphasized. For example, one central purpose of this project is to explore the extent to which deliberative theorists like Habermas divert deliberative democratic attention away from international centers of governance, given that punctual, deliberatively-democratic decision outcomes can be more realistically expected to emerge out of the established legislative channels of domestic constitutional democracies.

So, my concern is that the prevailing focus on punctual outcomes leads theorists to underestimate the discursive-deliberative potentials of extra-state centers of governance. I maintain that the intrinsic gain of contributing to persons' integrity or self-respect, and the long-term gain of enhancing future political outcomes, are—alongside the goal of generating more or less prompt, deliberatively-democratic decision outcomes—importantly at stake in such contexts. On my view, all three normative gains at issue derive from the deliberative model's motivating value: the norm of equal respect for persons. Insofar as deliberative democrats value and are motivated by the norm of equal respect, all three goals are, in general, at stake in political contexts. And underlining the wider range of gains at stake opens up further contexts deserving of attention from deliberative democrats.

However, some might object to the claim that all three goals are at stake in political contexts. I expect that few would object to the suggestion that some deliberative theorists (for instance, Gambetta) should pay greater attention to the ways in which the quality of punctual decision outcomes are shaped by the interpersonal and inter-group relations among participants, and thus to the ways in which a particular deliberative setting may be normatively rich and politically important if it helps build relations of regard but does not itself yield deliberatively-democratic, punctual decisions. Correspondingly, I do not expect many to contest the suggestion that reinforcing attentiveness in these ways might make a difference in terms of the sorts of political contexts that are deemed worthy of deliberative democrats' consideration and efforts.

Where I do anticipate some serious doubt is regarding my suggestion that the goal of contributing to persons' integrity or self-respect is likewise importantly at stake in political contexts. A counter-proposal might claim that although this goal is indeed one important aspect of realizing equal respect, political contexts—which are time constrained and oriented around resolving collective issues—are not the right place for this. Instead, we might rely upon, for instance, the more leisurely and intimate interactions among family and friends, and even therapy sessions or groups, to focus on the goal of supporting persons' senses of integrity, self-respect, or personal flourishing. Although political deliberations, which do involve what I have been referring to as the experience of recognition, may sometimes contribute to this goal, this should be viewed more as a "bonus" side-effect than as something that is generally and importantly at stake in political contexts. The charge would be that I cannot claim to rectify any sort of neglect within deliberative theory by underlining this normative goal and insisting that it requires the attention of deliberative theorists.

In response, while I do not want to say that every context of interaction wherein some contribution can be made to the goal of supporting persons' senses of self-respect and integrity ought to occupy the attention of deliberative theorists, I do propose that this goal is at stake whenever we interact with others, insofar as we are committed to the norm of equal respect. Drawing on a relational understanding of the self, my working hypothesis is that personal integrity is continuously created, re-created and sustained in and through our relations with others; thus, our senses of self-respect and integrity are persistently vulnerable to the responses of those others we interact with. So, insofar as the motivating norm for deliberative theory is equal respect, and insofar as supporting individual flourishing and self-respect is one key way of helping to realize this motivating norm, then I see no reason for deliberative theorists to deny that the goal of supporting persons' senses of self-respect and integrity is at stake in all or at least most social interactions, including political ones. And therefore, while this goal may not actually define the contexts deserving of deliberative theorists' attention, I do maintain that deliberative theorists should not lose sight of it. It is at least in this sense that I assert that all three normative goals are at stake in political contexts.

There may, however, be a further objection to this thesis that all three normative goals are at stake in political contexts: that pursuing the additional normative goals that I highlight (the intrinsic gain of contributing to persons' integrity or self-respect, and the long-term gain of enhancing future political outcomes) in the manner that I propose actually works at cross-purposes with achieving quality punctual decision outcomes. This is because of my claim that deliberative settings require expansive openness to topics, types of reasons, and modes of expression in order to secure appropriate recognition for participants. The worry here is that such expansive openness actually compromises the capacity of deliberative spaces to produce good, punctual decision outcomes. The strongest version of this concern, I think, would allow that the latter goal also trades on recognition—recall my earlier discussion of the critical epistemic or information-uncovering role that the understanding-oriented or recognition stage of deliberation plays in the production of good punctual outcomes. But the critic might suggest that the recognition requisite for generating good punctual outcomes can emerge in less expansively open processes of deliberation—and indeed must, so as not to compromise their capacities to produce such outcomes.

Habermas, for example, will be especially worried about my recommended rule of openness to modes of expression, where this includes emotionally inflected styles of communication. Habermas construes any affective dimension in dialogue and deliberation as the invocation of an irrational or "emotivistic tinge" that will skew results (Habermas 1989, 40-5). Incorporating an emotional dimension, according to Habermas and as explained by Honneth, "is inevitably accompanied by the danger of an affectively shielded particularism… discourse quickly becomes dependent upon chance emotional ties and loses the function of being a cooperative search for truth that relates only to reason" (Honneth 1995, 304). So inviting emotional expression into deliberative spaces "inevitably" invites outcome-compromising biases or closed-mindedness, since those persons with whom one develops affective bonds may take priority in the deliberation, such that other participants' perspectives, needs and interests do not get fair attention and consideration.

Thus, Habermas and others think that emotional expression should be ruled out: deliberation should be an impartial, dispassionate, "purely cognitive feat of the understanding" (Habermas 1989, 45-6). More generally, the critic's point is that some "impartiality" constraints are necessary if deliberative processes are to maintain a focus on punctual outcomes. Although an expansive openness to topics, types of reasons, and modes of expression may indeed be essential for promoting the intrinsic and long-term gains that I have argued are also at stake in political contexts, such expansive openness is *too* unrestrained for deliberative processes that are meant to issue forth prompt outcomes with a deliberative-democratic quality. The recognition or understanding-oriented stage requisite for generating good punctual outcomes can and must emerge in less expansively open processes of deliberation. Therefore, to focus on the goals of contributing to persons' self-respect and enhancing future political outcomes would work in tension with the focus on producing good punctual outcomes, insofar as I maintain that the recognition requisite for realizing the former normative goals demands expansively open dialogical processes.

In response, although I appreciate the attempt to protect deliberative processes from "shielded" and narrow perspectives that are incapable of giving others' views due attention and consideration, I propose that emotionally inflected modes of communication and relating neither inevitably nor uniquely entail such bias and closed-mindedness. While I cannot develop this hypothesis here, I do think it is possible to sustain particularistic emotional bonds without this necessarily meaning that the other participants with whom one does not share affective ties do not get fair attention and consideration. What is more, even though biases deriving from particularistic emotional ties indeed *might* develop and distort deliberations, this is not the only or unique source of deliberation-distorting biases. For example, a steadfast and dogmatic pursuit of communicative exchange that proceeds strictly according to the rules of informal logic—the sort of communication that is commonly understood as paradigmatically impartial and dispassionate—itself arguably betrays a sort of bias and closed-mindedness that can exclude certain participants, distort the balance of information generated, and compromise the quality of the decision outcomes.

More generally, and as already discussed, my view is that no mode of expression or exchange of reasons is ever neutral; as Young says, impartiality is a fiction. So, declaring certain modes of expression and types or reasons (such as the logical and "purely cognitive") as neutral or impartial really just privileges one particularistic mode, or one sort of bias, over others—which compromises the range of normative goals at stake during deliberative processes. Thus, I sustain my commitment to the view that impartiality constraints on deliberative processes, like the suggestion by Habermas to rule out emotions, do more harm than good—and not just with respect to the intrinsic and long-term goals that I develop in this chapter, but also regarding the more typically central goal of generating good punctual outcomes. Deliberative processes cannot be insulated as such from the variety of ways that biases and closed-mindedness can manifest. And this suggests the importance of striving for expansively open deliberative spaces, wherein participants can offer their partial perspectives to the collective for consideration and discussion regarding which partialities and biases are and are not acceptable to all affected. In the end, an expansive openness to topics, types of reasons, and modes of expression does not pit the intrinsic and the long-term goals that I highlight against the punctual-outcome goal: it is vital for generating each of these three normative goals.

Overall in this chapter I have proposed that the deliberative model's essential dialogical spaces, oriented towards reciprocal understanding and recognition, not only underwrite the production of punctual, legitimate decision outcomes; they also enable further, irreducible normative gains which are importantly at stake in political contexts. Now I want to both elaborate and critically examine this proposal by applying it to a case study, and a challenging one at that. The governance enacted at the WTO is purportedly power-ridden and manipulative. It may seem extraordinarily optimistic to expect that the interpersonal recognition and the range of normative gains that it makes available to be manifest in this context. I suggest that the discursive democratic prospects cannot be dismissed so easily, and I put this to the test in the following chapter.

In Chapter Three I examined a range of normative gains that can result from discursive and deliberative engagement, highlighting in particular the ways that such engagement can enhance interpersonal and inter-group relations, both among the participants in a particular deliberative forum (yielding intrinsically valuable gains), and in ways extending beyond the particular forum (contributing to the deliberative-democratic quality of future outcomes). In this final chapter I investigate the discursive-normative potentials available in the case of civil society actors' efforts to directly access the WTO.

I return to Chapter Two's argument for the critical importance of direct channels for access to extra-state and extra-constitutional centers of governance, now tailoring the argument specifically to the case of civil society activism at the WTO. Chapter Two left off with my reconstruction of Habermas's weak, pragmatic domestication argument to the effect that such attempts to leap-frog domestic governmental channels are just too susceptible to anti-discursive forces. Habermas implies that the democratic risks involved in pursuing such leap-frog activity outweigh the democratic risks of maintaining a domesticated version of the deliberative ideal. I disagree: we should insist upon and pursue discursive obligations in extra-constitutional political contexts—most plausibly, where there is already some commitment to democratic values. To this end, and as set up in Chapter Two, I will focus on the WTO as a specific case study, especially since that organization has in the past decade become one of the central extra-state centers of governance that civil society groups target for direct access.

In this chapter, then, I argue that, even given the sorts of democratic risks that worry Habermas and others, there are critical discursive-normative potentials made available by direct civil society or NGO participation at the WTO, to the extent that certain such occasions of participation can be considered deliberatively democratic—particularly when we look beyond the goal of producing more or less punctual deliberative-democratic decision outcomes, and also attend to the goal of enhancing relations of regard, both within and extending beyond the NGO-WTO discursive-deliberative spaces. I respond, in a context-specific way, not only to Habermas's concerns, but also to experts on the WTO who similarly argue that concerned civil society groups should go through their domestic governments rather than seeking direct access to the WTO. Appreciating the possibilities for normatively rich NGO participation at the WTO presupposes some understanding of the organization itself. Thus, I begin with a brief background summary of the purpose and decision-making architecture of the WTO, mentioning certain well-documented ways in which its formal arrangements for democratic decision-making are compromised in practice.

The WTO

The WTO succeeded the General Agreement on Tariffs and Trade (GATT), which was initiated in 1947. The GATT underwent a round of negotiations from 1986-1994—referred to as the Uruguay Round—that concluded with the GATT's

124 member countries signing the "Marrakesh Agreeement Establishing the WTO" (Jawara and Kwa 2003, 9). As of December 2005, the WTO has 149 member countries. Based in Geneva, it functions as a forum for ongoing international trade negotiations, administers the WTO trade agreements and declarations, monitors national trade policies, and adjudicates trade disputes. The rules of the WTO system are agreements that pertain to a range of areas of commerce, from agriculture to copyright protection; and the agreements all tend to be lists of policies, laws, and regulations that governments can no longer establish or maintain (Shrybman 2001, 1, 6).

The WTO agreements are the product of negotiations among member governments, and the WTO claims to be a democratic, member-driven, neutral organization, whose only goal is to "help producers of goods and services, exporters, and importers conduct their business" (WTO 2006). Indeed, the decisions taken at the WTO are said to be made by fair democratic consensus among all members, such that no member government has to accept any agreement that it does not endorse (WTO 2005; Charnovitz 2000, 198; Jawara and Kwa 2004, 19). At times, voting is also invoked, on the democratic, equalizing principle of one-member, one-vote, and by two-thirds or three-quarters majorities, "with respect to such issues as new members, amendments to WTO rules, waivers, and interpretations of WTO Agreements" (Shrybman 2001, 2).

Formally, the main WTO bodies for negotiating and decision-making are the Ministerial Conferences, which are open to all WTO members, and occur at a minimum of every two years at different locations across the globe (Jawara and

Kwa 2004, 13). As Steve Charnovitz notes, "[t]he government officials who attend the Ministerial Conference are trade ministers who are sometimes elected to parliament within their country but are usually appointed by elected officials" (Charnovitz 2000, 212). The other decision-making bodies of the WTO meet on an ongoing basis at the headquarters in Geneva: this includes the General Council, as well as the various subsidiary committees and working groups (like the Agriculture Committee or the TRIPS Council) (Khor 1999, 40). Member countries are expected to send a diplomatic mission to Geneva, so that government officials from the missions can attend the various daily meetings of the General Council and the many committees and groups (WTO 2006a). The General Council carries out the business assigned to it by the ministerial agreements, and makes day-to-day decisions dealing with "such broad issues as trade in goods, services, or intellectual property," while the various subsidiary councils "deal with such specific issues as textiles, agriculture, and import licensing" (Shrybman 2001, 2; Jawara and Kwa 2004, 16).

The General Council also sits as the Dispute Settlement Body (DSB), which governs trade disputes between members (Jawara and Kwa 2004, 16). Moreover, to deal with appeals to the decisions made by the Dispute Settlement panels, there is an Appellate Body consisting of seven members that serve four year terms. The seven members are supposed to be experts in law and international trade, and are appointed by a Selection Committee comprising the Director-General, the Chairpersons of the General Council, the DSB, the Council for Trade in Goods, the Council for Trade in Services, and the TRIPS Council (WTO 2006b). Together the

Appellate Body and the Dispute Settlement panels function as a particularly strong judicial branch, having at its disposal the effective enforcement mechanism of trade sanctions (Bayne and Woolcock 2003, 4; Buchanan and Long 2003, 3; Khor 1999, 42).[77]

The WTO also funds its own Secretariat to help officials manage and carry out the WTO's ongoing business. Ostensibly, the Secretariat has no decision-making powers (only members do); its main duties are to supply technical and professional support for the various councils and committees; to monitor and analyze developments in world trade; to provide technical assistance for developing countries; to provide information to the public and the media and to organize ministerial conferences; to provide some forms of legal assistance in the dispute settlement process; and to advise governments wanting to become members (WTO 2006b). The Secretariat presently is composed of 635 staff members, which includes a Director-General, personnel working in support services, as well as professionals like economists and lawyers with specializations in trade policy.

The WTO's "democratic deficit"

The WTO's formal arrangements for democratic decision-making are consistently compromised in practice. For example, even though every member is entitled to attend any of the official and scheduled meetings, many developing countries are unable to have diplomats present, either because they cannot afford to send a mission to Geneva at all, or because their mission is too understaffed to cover the often several daily meetings at the WTO (Khor 1999, 40). Countries that are economically disadvantaged, in other words, are also disadvantaged in terms of the ongoing decisions and negotiations at the formal meetings based in Geneva, which compromises the democratic quality of the ensuing decisions. The venue of the meetings, then, itself systematically disadvantages some participants, compromising the WTO's claimed commitment to equal access and fair participation chances for its members.

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[77] And so, as summarized by Steven Shrybman, "[m]embership in the WTO brings with it access to the markets of other WTO members, the option of invoking dispute resolution to enforce that right, and the opportunity to influence the course of future trade negotiations. But these obligations are reciprocal, so countries now seeking membership must negotiate admission by demonstrating a willingness to open their markets to all WTO members and to be bound by WTO disciplines" (Shrybman 2001, 2).

This disadvantage is severely compounded by the fact that "a significant part of the important bargaining and negotiation goes on in private [i.e., outside of the formally scheduled meetings]" (Khor 1999, 40). Typically, a few of the economically and politically powerful countries—notably, the Quad countries (the European Community, the USA, Japan, and Canada)—make key decisions among themselves, and then organize "informal meetings" with select and influential developing countries in order to bring them onboard (Khor 1999, 40). Reportedly, the few powerful countries employ bullying tactics to garner agreement where it is not forthcoming—for instance, they threaten to put the country on a trade blacklist or suspend preferential trade agreements, and / or put pressure on the country's other officials back home to relieve the diplomats of their jobs (Jawara and Kwa 2004, 150; Brock and McGee 2004, 8). Then, once these alliances are secured, the decisions dictated by the powerful few are typically easy to pass through the General Council or the Committees—spaces that similarly operate under a "climate of intimidation" and double-standards (Jawara and Kwa 2004, 148). For example, decisions made in the formal meetings are allegedly consensus-based; but this democratic ideal of consensus is employed with duplicity. In particular, when the major powers are in agreement and together pursuing a position, they are prepared to pursue an at times very prolonged process of "consensus-building" (which can actually mean arm-twisting) (Khor 1999, 40). However, when even a vast majority of developing countries are in agreement and together pursue a position, but a few of the major powers disagree, then the issue is more likely to be quickly shelved on the basis that "there is no consensus" (Khor 1999, 40). These coercive tactics—the threats and the manipulations—deliberately forestall fair and equal participation chances for WTO members.

Responses to the WTO's democratic deficit: access for NGOs?

Given the WTO's widely documented failure to put into practice its formal arrangements for democratic decision-making, it is unsurprising that it has, in the last few years, increasingly been a key target for civil society activism and demands for access. However, one response to this activism is to insist that, even if the WTO presently confronts a democratic deficit of sorts, this does not mandate opening it to direct civil society participation. This would presumably be Habermas's response, given his concerns regarding any civil society participation that does not filter through constitutional-legislative channels. But before directly addressing Habermas's position, I want to engage some of the literature specifically on the WTO, which alongside Habermas—but on grounds more specific to the context—treats opening the WTO to direct civil society or NGO input as both unnecessary and mistaken. First, it is unnecessary because the WTO could better realize its formal arrangements for democratic decision-making. Moreover, so this argument goes, the WTO is fundamentally a state-based institution—its participants are governments, and *should not* be individuals from civil society.

In terms of taking measures to improve the WTO's existing formal arrangements, the Secretariat has recently committed itself to providing some support, in the form of technical assistance, to delegates from developing countries. This support could be extended—for instance, by funding developing countries to sustain offices in Geneva, and thus at least have officials present for the ongoing decision-making. And some suggest that to furthermore "take into account the lack of human and financial resources of developing countries, there should not be more than one or at most two meetings taking place at the same time" (Khor 1999, 47). Moreover, greater emphasis on the quality of the chairing or facilitation within the formal meetings appears imperative. In order to confront the "climate of intimidation" and promote dialogue and fair deliberation in these meetings, the Secretariat could, for instance, staff a contingent of expert civilian organizers of deliberation to act as facilitators in the meetings.

In terms of it being a mistake to open the WTO to direct civil society or NGO input, a recurring view—as Steve Charnovitz explains in his critique of it—is that doing so would unfairly give such NGOs "'two bites at the apple,' one at home and one at the WTO."[78] The idea here is that those civil society groups that want direct access to the WTO have already had their chance to gain influence, in terms of electing their government, which does participate at the WTO. But "[a]n NGO whose view is being advocated by its government would have little reason to participate, so perforce it is only the NGOs articulating minority interests who want to use their voice. But those ideas are illegitimate because they were already rejected through the domestic democratic process."[79] Evidently, the NGOs pushing for access must—given their failure to influence their own governments—represent narrow views, or interests without broad public(s) support; and as such, allowing them direct access to the WTO would not enhance but further compromise its democratic character. That is, "[f]ar from enhancing democracy, two-bite participation would undermine it" (Charnovitz 2000, 200).

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[78] (Charnovitz 2000, 199) Charnovitz attributes this argument against NGO access to the WTO to: John R. Bolton, "Should We Take Global Governance Seriously?" *Chicago Journal of*

In reply, I want to suggest that concerned civil society groups or NGOs, rather than aspiring for two bites at the apple, are instead responding to having had no bite so far. The argument that the NGOs pushing for direct access whose views are not already represented in their governments must have no significant public base oversimplifies domestic democratic systems. For instance, it neglects the way that many governments respond to globalization by prioritizing big business interests. Many governments, and especially WTO members, feel constrained to pursue policies in keeping with deregulation and trade liberalization, irrespective of

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Interanational Law 1 (2000) pp. 205, 217; Jagdish Bhagwati "After Seattle: Free Trade and the WTO," *International Affairs* 77 (Jan. 2001), pp. 1, 29; and Thomas M.T. Niles, "Protest Aimed at the Wrong Target," *Financial Times* (Dec. 14, 1999), p. 18.

[79] (Charnovitz 2000, 200) Charnovitz attributes this elaboration of the argument against NGO access to the WTO to: Marin Wolf, "Uncivil Society," *Financial Times* (Sept. 1, 1999), p. 14; and David Robertson, "Civil Society and the WTO," *World Economics* 23 (2000), pp. 1119, 1126.

what the domestic public at large would decide. And so it is far from obvious that the NGOs striving for direct access to the WTO are pursuing very narrow views.

Furthermore, even presuming that some domestic governments do manage to proportionately reflect the views of its public, this does not mean that those views will be pursued by the government's delegates at the WTO. As Martin Khor suggests:

> Even today, in most countries, Parliamentarians have remained in the dark about important negotiations and even agreements in the WTO, which bind their countries to change their national policies. Often these have very serious economic, social and cultural implications that very deeply affect the present and future shape of their economies and societies. Even bureaucrats or Ministers that are not in the lead Ministry (usually the Ministry of Trade or Commerce) are largely or wholly unaware of the developments in the WTO. The media, academics, trade unions, farmers' groups, businessmen and NGOs, are usually not consulted and have little or no knowledge of what is happening in the WTO or what is their government's position on the many issues under discussion at the WTO (Khor 1999, 41).

Granted, those arguing for domesticated politics may suggest that measures can be taken to improve these lines of transparency, and indeed that in recent years there is greater public and broader governmental awareness of the workings of and negotiations in the WTO. Nonetheless, presumably the interactions and processes of decision-making at the inter-governmental level are accompanied by dynamics and risks that may not be anticipated or controllable at the domestic level—even if that domestic level of politics is deeply democratic and resistant to big-business bias. This suggests that at every level of official decision-making there should be avenues of access for affected individuals and groups. As Charnovitz suggests, "[w]hen individuals are affected by an official decision, they ought to be able to have input into the decision-making at the level where the decision is being made…

at every level where governmental decisions are taken, there should be a process for hearing from nongovernmental interests" (2000, 204 and 208).[80]

Moreover, even if the WTO's formal arrangements for democratic decision-making among its member states were somehow perfectly realized in practice (and I would embrace measures to improve the WTO's formal arrangements for democratic decision-making), it would arguably still be undemocratic in ways that underwrite the importance of direct NGO access. Not all countries in the world are members of the WTO—presently, of the 192 independent countries in the world, 43 are not members of the WTO (and, notably, almost half of the 50 countries designated by the UN as LDCs are not members) (WTO 2006c). For some countries (more specifically, for those in power within some countries) this may be a matter of choice; for others it is a matter of not being deemed worthy—the inability of a country "to persuade such influential WTO members as the U.S. of its readiness to embrace the principles of free trade… [keeps] it out to the WTO club" (Shrybman 2001, 2). At any rate, the trade agreements made at the WTO not only affect persons from the member-states, but also persons from non-member states. Since co-members of the WTO become preferential trading partners (and there are hierarchies within the club too), non-member states, for instance Ethiopia and the Russian Federation, are disadvantaged with respect to global trade and commerce, and this can have life and death consequences for the persons living in such countries (Shrybman 2001, 2). But unless persons from non-member states have some avenues for direct access, they have no say whatsoever regarding the policies that contribute to shaping their lives.[81] And at least according to the deliberative model of democracy, all affected should have a say—this rule for openness or non-exclusion is one of the core norms constituting the deliberative ideal, and lends further weight to the view that NGOs should have some direct voice at the WTO. In short, civil society groups across the globe demand direct access to the WTO, and there are good reasons for maintaining that their voices should be heard by officials at the WTO.[82]

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[80] For further support of this view, see Daniel C. Esty, "Linkages and Governance: NGOs at the World Trade Organization," *University of Pa. Journal of International Economic and Law* 19 (1998), pp.709, 730.

To some extent, the WTO itself already concedes as much. Indeed, an article in the 1994 Marrakesh Agreement constitutionally commits the WTO to informally consulting with NGOs: Article V(2) states that "[t]he General Council may make the appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO" (WTO 2005a). Granted, in 1996 the General Council approved a set of guidelines to explicate this commitment, and made clear that NGOs were not to be directly involved in actual decision-making processes. But (accredited) NGOs are allowed to attend, as silent observers, the Plenary Sessions of the Ministerial Conferences (WTO 2005a). And the guidelines did initiate a series of informal activities with, and avenues of access for, NGOs—these include "the organization of [annual] joint NGO-WTO symposia, the launching of the WTO website, and the derestriction of certain WTO documents" (Buchanan and Long 2003, 24). As well, in 1996 the WTO Secretariat appointed a staff member, in the External Affairs Division, "specifically to liaise with NGOs," and part of this work includes organizing regular briefing sessions in Geneva for NGOs (Khor 1999, 44 and 46).

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[81] Note that the same can be said of persons living in states that are WTO members but that are not (meaningfully) democratic. Indeed, "[a]lthough a bare majority of WTO member governments are free and democratic, thirty-two percent are rated 'Partially Free' by Freedom House and seventeen percent are rated 'Not Free'" (Charnovitz 2000, 211). This is a problem for the abovementioned argument for domesticated politics and against direct NGO access to the WTO, which seems to assume that all member states of the WTO are robustly democratic.

[82] It is worth clarifying now that what is at stake in this debate is not whether NGOs be given a role in the WTO that is on a par with the member governments. As Charnovitz puts it, "no government or mainstream civil society organization is suggesting that NGOs be given a vote in the WTO, and therefore, opposition to that hypothetical NGO role should not be used as an excuse to oppose appropriate consultation and cooperation" (2000, 204). Rather than seeking equal footing with governments, what NGOs typically want is for "the WTO to hear [and to consult with] nongovernmental interests" (Charnovitz 2000, 204; see also Brock and McGee 2004, 5). This will become clear in what follows, where I discuss how many civil groups reject proposals for a formal "NGO" body within the WTO.

Nonetheless, "[d]espite… [some] evolution in WTO-NGO engagement over the last seven years… civil society groups are still dissatisfied with the interaction they are permitted to have with the WTO" (Buchanan and Long 2003, 63). For the most part, this is because the WTO's efforts thus far are not pursued very meaningfully—the participation opportunities afforded to NGOs seem insincere and unfair. As articulated by Charnovitz, despite a purported commitment to enabling NGO involvement, "so far [WTO] governments [and most notably those that are powerful and influential] have opted for shallow participation [with NGOs]" (Charnovitz 2000, 211; and echoed by Buchanan and Long 2003, 26). For instance, although (accredited[83]) NGOs are able to attend the Ministerial Conferences, there is a practice of setting up meeting rooms for the NGOs in a different building than the meetings (both formal and informal) of the official delegates, which means that there is "almost no communication between NGOs and the delegates… [NGOs] only observe the opening and closing ceremonies" (Khor 1999, 45; see also Brock and McGee 2004, 33). The shallowness of many of the WTO governments' engagements with NGOs is again reflected in the annual public symposia, an issue that I will take up in some detail below. And the same superficiality is reflected in the lack of NGO involvement in the ongoing trade negotiations in Geneva. Presently, the symposia and the Ministerials are the only official channels for NGO involvement. The WTO has yet to open channels for NGOs to have input into the ongoing negotiations at the daily meetings of the General Council and various sub-councils. Charnovitz, for instance, suggests that "the chairs of the various WTO subsidiary organs should meet with interested NGOs on a regular basis" (Charnovitz 2000, 212 and 213).

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[83] I will say something about the WTO's standards of accreditation shortly.

To recap, so far in this section I have argued against the position, emerging out of the specifically WTO-oriented literature, that direct NGO involvement in the WTO is both unnecessary and mistaken. As the organization itself concedes, there are good reasons for maintaining that the voices of civil society groups, and not just member-governments, should be heard at the WTO. Nonetheless, the existing provisions for NGO access—although important—remain shallow and require improvement.

Recently, some WTO officials have suggested that efforts to improve the avenues of access for NGOs should be directed towards setting up within the WTO, and more specifically as part of the WTO-staffed Secretariat, an official "NGO" body—an overall NGO advisory committee, to consult with the various councils (Charnovitz 2000, 214; Khor 1999, 45). However, many NGOs are opposed to this sort of formal and "umbrella" inclusion, for instance because of "the diversity of the types of NGOs and the diversity of views and perspectives among NGOs and other organizations of civil society" (Khor 1999, 45-6). Moreover, formal inclusion arguably comes with the risk of co-optation. As Buchanan and Long put it, "if some NGOs are allowed a seat at the table [within the WTO], questions arise concerning what opportunities for critique and autonomy they would thereby give up" (Buchanan and Long 2003, 63). Arguably, formal inclusion comes with the price of being allowed only a limited space for *critically* engaging the policy debates; the risk, as Andrea Cornwall puts it, is that the terms of the debate are already set, and critical energy gets redirected in ways that reinforce the status quo (Cornwall 2002, 24; Buchanan and Long 2003, 63-4; see also Fung 2004, 51). Dryzek is in agreement: he maintains that the formal inclusion of civil society groups within core international economic institutions like the WTO would "unduly deplete oppositional civil society" (2000, 137).

And so, although the WTO's existing provisions for NGO access are presently enacted rather superficially and this needs to be addressed, we should arguably not look to the establishment of an official NGO subcommittee within the WTO to rectify the inadequacies. Rather, as reflected in the sentiments of some of the civil groups themselves, there are good reasons for thinking that the more promising pursuit of greater access for NGOs will leave in place and revolve around the decentered, spontaneous mobilizations of civil society groups, and investigate concrete ways of improving the WTO's provisions for accommodating these mobilizations.

But before engaging this investigation by focusing on the WTO's annual public symposia events, I need to consider the extent to which decentered, spontaneous NGO mobilizations are particularly vulnerable to the risks that

Habermas has illuminated—namely, the risk of arbitrary social power and circumstance determining which groups achieve access and influence at extra-state centers of governance. Habermas importantly elucidates the danger that the (spontaneously mobilized) NGOs that will acquire voice and be heard at the WTO are those that are able to capitalize on normatively arbitrary forces. And this unequal access severely compromises the discursive-normative value of such aspirations for direct participation.

Perhaps a more precise way of making this point is to recall Habermas's articulation of the three core norms constituting the deliberative ideal: openness to all affected; equal and fair participation chances; and non-coercion. Holding out promise as a deliberative forum at least in part entails offering grounds for some reasonable expectation of approaching these core ideals. Essentially, I read Habermas as denying the reasonableness of such expectations with respect to the direct participation of civil society actors in current processes of international governance. If the NGOs that obtain influence at the WTO do so primarily on the basis of wealth and luck, this constitutes a form of coercion or manipulation that obstructs equal access and fair participation chances. And so, what I understand Habermas to suggest is that from the vantage point of the deliberative ideal, the more promising scenario is for NGOs to go through their domestic channels. However, I will argue that civil society efforts to access the governance enacted at the WTO have more discursive-normative potential than Habermas acknowledges. Indeed, some grounds for greater optimism in this respect can be drawn from Habermas's own work.

Revisiting Habermas's concerns

One of Habermas's central concerns regarding NGOs wanting to bypass domestic channels is the risk that non-discursive forces like money, social power, and luck will determine which groups achieve access and influence at the targeted extra-state centers of governance. However, as Habermas himself suggests when discussing domestic civil society mobilizations, civil societies can to some extent be relied upon to "self-select" for groups whose mandates do reflect a democratic or public interest or perspective, and not just social power or luck. Even without yet invoking formal parliamentary filters, on Habermas's analysis we can expect that in general, the dynamics within civil society itself will succeed in ensuring that the groups that become and remain dominant in the public sphere are indeed those with some discursive, democratic orientation, and not those simply drawing on non-discursive social power or luck. In the long run, civil groups cannot sustain their visibility and influence on the basis of arbitrary social power and circumstance alone—their pursuits must to some extent resonate with the interests of the public for whom they claim to speak or most centrally affect; or that public will eventually resist and mobilize against the group (Habermas 1996, 364). As Habermas explains, "[p]ublic opinions that can acquire visibility only because of an undeclared infusion of money or organizational power lose their credibility as soon as these sources of social power are made public" (1996, 364). Habermas is even optimistic that this self-selection for groups that genuinely "emerge from" a public will play out "even in more or less power-ridden public spheres" (375, 382).

Moreover, Habermas expresses greater confidence in the capacity for civil society itself to unmask and destabilize illegitimate infiltrations of power in the public sphere during what he refers to as periods of crisis—periods when the critical consciousnesses that develop within civil society and target certain issues, processes or institutions are then pursued through *intensified* protest efforts (382). In other words, Habermas expects the capacity of civil society actors to grapple with and overcome domination by those groups capitalizing on social (or administrative) power to be "strengthened in the course of escalating public controversies" (382). Presumably this is because in such periods there is wider public and critical attention to the issue at hand, and so it becomes more challenging to sustain an illegitimate claim to speak for a public.

Habermas's optimism regarding the capacities for domestic civil society itself, independently of the formal parliamentary filter, to resist domination by groups drawing on normatively arbitrary forces has its roots in Kant (especially Kant's *Perpetual Peace*), and is echoed in some contemporary critical theory (Chambers 2002, 97). And I think this optimism can extend somewhat to the context of civil society activism at the WTO. Parallel to the process of self-selection that Habermas outlines in the domestic case, we might expect that the multiple, affected civil societies will eventually self-select for those NGOs that really do speak for an affected public's interests, rather than those that are visible and influential due mainly to social power or lucky positioning.[84] Indeed, the extension of Habermas's optimism to this particular context may seem especially compelling, given that the WTO seemingly is, to invoke Habermas's term, in a period of crisis. Arguably, the WTO is deeply democratically deficient, and so facing what many have referred to as "a crisis of legitimacy" (Drache and Ostry 2001; Buchanan and Long 2003). Certainly it is the target of escalated protest efforts across the globe (Khor 1999, 42-3; Buchanan and Long 2003, 18). As such, according to Habermas's analysis of the heightened capacity of civil societies to weed out distortions of power during such periods of crisis, we might expect (at least at the abstract level of analysis engaged thus far) the various civil societies and publics—even those that are particularly power-ridden—to self-select, at least in the long run, for those NGOs directly targeting the WTO that indeed pursue views underwritten by a public.

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[84] For instance, on this logic, the visibility of Oxfam's advocacy efforts (for example, its "Make Trade Fair" campaign) at WTO Ministerial Conferences, and whatever influence such efforts might have, are at least in part underwritten by their ties to the voices of the grassroots farmers that such efforts are presented as supporting. And, on this logic, Oxfam's visibility and prominence in this

One might object to my attempt to extend Habermas's confidence in civil society in this way by suggesting that, even though Habermas does propose that the self-selection will play out "even in more or less power-ridden public spheres" (1996, 375), he is still only referring to the broad range of advanced liberal societies—societies where a constitutional framework is in place and well-established. As such, rather than parallels there are in fact critical differences between publics within advanced liberal societies and the various civil societies across the globe. Although Habermas is optimistic with respect to the capacity for the former to self-select, that confidence would not extend to the latter.

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context would eventually unravel if the NGO began to advocate positions that did not in fact serve the interests of grassroots farmers.

I do not want to underestimate the dissimilarities between societies where freedoms are formally guaranteed and entrenched, and societies where they are not. I presume that the persons living in societies of the first sort face less extreme obstacles to popular mobilization in general, and in particular to scrutinizing and weeding out NGOs that achieve dominance because of arbitrary power. And yet we nonetheless do see this sort of activity in societies that do not have well-established democratic, constitutional state structures.[85] Moreover, advanced liberal societies themselves confront obstacles to popular mobilization and scrutiny. While some regimes may more readily obstruct civic ferment and democratic efforts to publicize and politicize issues, government corruption and intimidation tactics still pervade in supposedly advanced liberal societies, albeit often less explicitly. Thus, just as it is important not to underestimate the disanalogy between publics within advanced liberal societies and the various publics across the globe, so it is important not to overestimate it—and especially not by exaggerating the efficacy of civil society mobilization in advanced liberal societies.

So, while I want to be aware of the various layers and degrees of potential dissimilarity between the plurality of civil societies—whether they are situated within or network across and beyond the borders of advanced liberal states—I also think there is at least some interesting room for optimism that, broadly speaking and at least in the long-run, they each might self-select for those NGOs directly targeting the WTO that indeed pursue views underwritten by a public. Therefore, Habermas's own analysis and confidence in civil society appears to suggest at least some degree of optimism regarding "leap-frog" activity in this context, beyond that which he proposes in his prudential domestication argument.

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[85] A good illustration here may be the "Orange Revolution" in the Ukraine surrounding the November 2004 presidential election. The Ukraine is not considered an advanced liberal society, for reasons including that the media is state-controlled, and corrupt tactics like voter intimidation are still prevalent. (What is more, Yushcenko—the candidate who lost the initial election but whom the majority favored—maintains that his face was disfigured by government officials' efforts to poison him in the months before the election.) But because the public was largely convinced that the initial election was won fraudulently, millions protested in Kiev and across the country for weeks, and eventually the Supreme Court called for a new election. Setting aside the issue of whether parties should be considered civil society groups and assuming for the moment that they are, this is a good example of the capacity for civil society—even those not constituted by a well-established constitutional state—to weed out distortions of power and self-select for those civil society groups that have a genuinely public base.

But even presuming that over time the NGOs sustaining a voice at the WTO are those that genuinely do have some public base, one has to acknowledge that, relative to each other, NGOs' capacities are importantly affected by normatively arbitrary social power and circumstances. More specifically, NGOs from the developed world are typically advantaged—in terms of their visibility and potentials to influence WTO delegates—because of the non-discursive forces of wealth and lucky positioning; NGOs based in the EU, the US and other economically and politically powerful states "have more funding, are located closer to WTO offices in Geneva, are more likely to finance international networks, and have greater indirect access to information from their state representatives" (Shaffer 2001, 62). And access to funding is particularly beneficial in this context, since the focus at the WTO is on technical and legal details; this favors those NGOs that have the organizational complexity and resources to fund sufficient staff and develop enough and professionalization or expertise to engage effectively with the complex, specialized issues surrounding trade policy (Brock and McGee 2004, 53).[86] NGOs and GROs from developing nations, which tend to struggle with limited resources, may not be able to mobilize their concerns as easily as those from developed nations (Jawara and Kwa 2004, 21).

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[86] Not just NGOs based in developing countries but more specifically big business groups are favored. Currently, the WTO includes business organizations in its definition of NGOs; and this enables the well-endowed business groups to consistently constitute the biggest percentage of accredited NGOs attending WTO ministerials and meetings (Buchanan and Long 2003, 26-7). This,

Given these sorts of normatively arbitrary advantages that tend to be enjoyed by NGOs based in the North, some of the activists as well as delegates from developing nations are critical of the proposal that there should be direct NGO participation at the WTO: "if NGOs are allowed more participation rights, especially in dispute settlement cases, it would mainly be Northern NGOs that will take advantage of this, as once again the Northern NGOs are more endowed than Southern NGOs. The Northern NGOs would be added to the might of Northern governments, and this would cause even greater imbalance against the developing countries" (Khor 1999, 46). This concern echoes Habermas's worries about NGO "leap-frog" activity in general. Lucky positioning can impede equal access and fair participation chances for NGOs and GROs at an international center of governance like the WTO, as so calls into question the discursive-normative potentials of such civil society efforts to gain direct access. Therefore, despite what I have suggested is, from a more abstract perspective and given Habermas's own framework, some degree of undue skepticism, Habermas's worries about the potentials for normatively arbitrary forces like wealth and luck to determine which groups achieve access and influence at extra-state centers of governance do persist in this

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I think, urgently reinforces the need, as discussed in Chapter Two, to distinguish between private enterprise (and especially big business), and civil society. If the WTO were to cease accrediting as NGOs groups whose primary objective is profit, this alone could do some significant work in shifting the imbalance at issue. However, imbalances would persist: the discussion above indicates that non-business NGOs *from developed nations* tend to enjoy normatively arbitrary advantages that are not as readily available to NGOs and GROs from developing nations.

particular context. Nonetheless, I still maintain that Habermas's worries do not warrant his domestication of the deliberative model, and do not discredit direct NGO participation at the WTO, because some of the democratic risks that he isolates, and that have been given more concrete shape in this discussion, can be managed by the discursive-democratic restructuring of the transnational NGOs that target the WTO for access.

Further managing the risks that (in part) underwrite Habermas's domestication

Recall that on Habermas's account, it is the job of legislatures to decipher which policies and decisions for collective life really are in the interest of society in general. The deliberative-democratically structured legislature, then, is meant to guard against the risk that political influence emerging out of civil society becomes monopolized by those few groups that happen to be in positions of social power due to wealth or circumstances of location. Essentially, the legislature formally equalizes and regulates the channels by which civil society groups can seek political influence, in order to prevent normatively arbitrary, differential access.

The main bodies at the WTO are very different than domestic legislatures, even considering that the WTO presents itself to be a democratic institution. Neither the WTO Ministerial Conferences nor the General Council and subsidiary councils are mandated to oversee or guard the interests of the collectivity of affected publics (a collectivity that can, depending on the issue, span the globe). Rather, member states send delegates to the WTO to stand behind their own national interests. The trade ministers and General Council representatives "are paid to defend and promote the interests of their countries," not to together decipher which of the candidate policies really are most acceptable to the collectivity of affected publics (Jawara and Kwa 2004, 21). As such, the WTO's legislative bodies do not offer the same filtering function that Habermas expects of deliberatively-democratic domestic legislatures.

I do not think that a fruitful response is to aspire to reshape the WTO so as to model idealized deliberatively-democratic domestic states. To be sure, some may take this route—for instance, David Held, who is in general orientated towards establishing deliberatively-democratic, state-like institutions at the global or 'cosmopolitan' level (1995, 228, 235, 272-80). However, as John Dryzek puts it, "the introduction of stronger system-level institutions is not necessarily a democratic advance" (1999, 32). In particular, working to transform the WTO into a global, deliberatively-democratic, state-like institution would enhance its perceived legitimacy and reinforce its power. But the problem is that, even in spite of initiating concrete mechanisms for democratic reform, the sorts of power plays already at work informally or behind the scenes will in all likelihood persist. And then, under the banner of an institution that can claim near-global legitimacy and so justify its centralized and heightened power, those who are in fact marginalized and excluded will be even less visible—the organization will be even better placed to muffle pluralistic, democratic impulses and opposition.[87] Precisely this sort of concern motivates Walden Bello, activist and founder of Focus on the Global South, to insist that "today's need is not for another centralized global institution but the de-concentration and decentralization of institutional power" (2003, 287).

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[87] This pessimism may seem out of place given my general optimism regarding the potentials for transforming the perspectives of those in power in the direction of greater regard for disempowered others, when those in power engage in discursively structured and embodied contact and conversation with these others. Insofar as the democratic, institutional reform of the WTO would achieve this, then perhaps I should be more hopeful that the prevailing power plays and arm-twisting at the WTO might very gradually decrease. In response, although I am indeed optimistic about

Aside from aspiring to reform the WTO on the model of deliberatively-democratic domestic states, perhaps other concrete measures can be taken to get the organization to perform some of the filtering functions that Habermas expects of deliberatively-democratic domestic legislatures. Indeed, some suggest that the WTO Secretariat's process of NGO accreditation could be invoked so as to put pressure on the NGOs seeking influence to genuinely pursue and sustain a democratic basis rather than relying on normatively arbitrary sources of influence and legitimacy. For instance, a condition on NGO accreditation and access could be that they must have in place mechanisms contributing to their accountability and sustaining their ties to the public for which they claim to speak (Evans 2003, 157). And perhaps they should have to report their membership lists and financial supports. Introducing this concrete institutional measure might help to filter out those NGOs that are, relative to other NGOs, visible and influential at the WTO due mainly to non-discursive social power or lucky positioning.

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transforming and shifting power dynamics via dialogue and deliberation, I also assume that such dynamics never somehow vanish. So, even if the power dynamics that presently prevail at the WTO were to shift given certain measures for institutional reform, I think this would also give way to further plays of power. And considering the profound risks involved in enhancing the formal democratic legitimacy of a powerful institution such as the WTO (for instance, the risk of power becoming monopolized, in an institutionally entrenched and less contestable way), instead of focusing my efforts on the democratic re-structuring of the WTO, I am motivated to consider less centralized avenues for addressing the Habermasian concerns at stake in this discussion. Moreover, engaging the question of how to democratically re-design a complex institution like the WTO would take expertise—both regarding the organization itself, and regarding institutional engineering more generally—that goes well beyond what is available to me for this project.

However, some might suspect that enhancing the WTO's control over NGOs even in this way would contribute to the centralization and consolidation of its power in unwelcome ways. And so I want to draw attention to an avenue for mitigating some of Habermas's important worries that is even more modest when it comes to conferring greater power upon the WTO: calling upon the NGOs themselves to make good on their democratic commitments.

NGOs' internal democratization

As already mentioned, there is indeed evidence to suggest that the NGOs that are effective and influential in the trade arena and more specifically at the WTO tend to be those with the most access to resources, and correspondingly tend to be those that are based in the urban centers of developed and Northern nations. To be sure, many such influential (Northern-based) NGOs claim to advocate on behalf of those persons and groups that are most disempowered and indeed harmed by (what is characterized within activist communities as) the WTO's consistently pro-corporate or big business agreements and policies. And those who are most disempowered by these policies, which indeed often achieve global reach, are the global poor—precisely those who do not have the wealth and lucky positioning to acquire visibility and voice at a forum like the WTO.

The problem here is that even though many of the NGOs with resources may claim to act on behalf of those who are not similarly advantaged in terms of wealth and positioning, some critics worry that in practice these NGOs tend not to be sufficiently accountable. As Karen Brock and Rosemary McGee's studies of various Europe-based NGOs indicate, the "connections between [the more empowered] trade policy activists and 'the grassroots' [that such activists often claim to speak for] are not strong" (Brock and McGee 2004, 51). And this lack of NGO internal accountability compromises the deliberative-democratic quality of any NGO direct participation at the WTO. More specifically, it jeopardizes the core discursive norms: if NGOs are unaccountable to the GROs on whose behalf they claim to speak, then those grassroots persons are effectively excluded and left with no or limited participation opportunities—let alone the equal and fair participation chances that the deliberative ideal further mandates. And when the deliberative-democratic quality of NGO direct participation is compromised in these and other ways, it ultimately exacerbates the risk that, I have argued, worries Habermas: namely, the probability that any influence achieved by NGO "leap-frog" activity is primarily a function of forces like wealth and lucky positioning, and more generally that such activity is normatively impoverished vis-à-vis the deliberative ideal. Put differently, if NGOs are accountable to their grassroots, then their "leap-frog" activities are better positioned to approach the core norms constituting the deliberative ideal: such accountability can reinforce critical lines of access for those affected; correspondingly, it opens up opportunities for fair participation; and it works against alternative ways of gaining and sustaining power that are normatively arbitrary and indeed coercive. NGO accountability thus helps establish the likelihood that whatever visibility and influence NGOs acquire at an international center like the WTO is not simply or primarily a function of wealth or lucky positioning, but meaningfully informed by (ideally deliberatively) democratic norms and ties.

Some examples here may be instructive. As an instance of well-funded and influential NGOs based in the North that aspire to influence WTO debates, Buchanan and Long cite the Council of Canadians (2003, 12). Their point in invoking this organization is to illustrate the above concern about NGO accountability. The Council advances a global "Our World is not for Sale. WTO: Shrink or Sink" petition. And yet, the Council's members—let alone the global poor that its global petition claims to recognize and even speak for—"have little input into the development or formulation of policies apart from endorsement through the purchase of memberships" (Buchanan and Long 2003, 12). As a further illustration, consider the Northern-based and well-funded NGO Oxfam International. This organization sustains an office in Geneva in order to engage, vis-à-vis the WTO, its global "Make Trade Fair" campaign on a full-time basis. Arguably, Oxfam is more dedicated than the Council of Canadians to participatory research and being accountable to the global poor on whose behalf they claim to advocate. Being participatory and accountable to their grassroots "constituencies" is presented as part of the very logic of their "Make Trade Fair" campaign. To this end, Oxfam funds and has established programs of work with its GRO partners in the South, so that its campaign is directly informed by those in the South who are affected by and concerned about the WTO trade regime (Brock and McGee, 2004, 34-5).[88] Nonetheless, Oxfam's formal commitments to accountability are called into question by, for instance, Bello's claim that he and his fellow activists in the developing world are actually critical of Oxfam's campaign (2004, 58-9). According to Bello, Oxfam's campaign is problematic because it "argues that it is the access of Southern countries to Northern markets which is the critical problem of the global trade regime… [and this] actively deflects the movement from far more important problems. The overriding priority right now is to oppose the WTO's push for a wider mandate" (58-9).[89]

This concern regarding NGO accountability to their grassroots is by now widespread—it is, for instance, a criticism pursued by several of the authors in Edward and Gaventa's 2001 edited collection, *Global Citizen Action*. And again, a consequence of this lack of NGO internal accountability is that it intensifies the risk that any influence achieved by direct NGO activity at extra-state centers of governance will reflect normatively arbitrary social power and accidents of circumstance. However, what is now revealed is that one avenue for managing this risk is to demand that NGOs to attend to their own internal democratization. If groups like the Council of Canadians and Oxfam are more robustly internally democratic and accountable, then when they do pursue influence at the WTO Ministerial Conferences, there is greater chance that whatever influence they might have will be rooted in discursive-democratic norms and not simply reflective of the fact that, being based in a relatively wealthy state, they have more resources at their disposal. And this can do some work towards rectifying the disempowerment of those from developing countries at the WTO. Thus, in this vein, it seems helpful to clarify that pursuing direct access to institutions like the WTO comes with the responsibility of paying "constant attention to internal forms of governance that are participatory, transparent, and accountable" (Gaventa 2001, 284). Or, as Edwards and Hulme put it, the onus is on NGOs pursuing leap-frog activity to "put their houses in order" (1996, 261).

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[88] This outreach and participatory research is reflected, for example, in the way that the "Make Trade Fair" campaign has extended its focus on agriculture to include also an emphasis on labor issues and the way that trade affects workers in developing countries.

[89] Bello is attempting to draw our critical attention to the fact that, as Buchanan and Long put it, "the WTO is already about a lot more than the dismantling of barriers to trade—notably the protection of intellectual property" (Buchanan and Long 2003, 61).

However, this suggestion begs the question of how to motivate the internal democratization of NGOs; or, more precisely, how to enhance publics' demands for NGOs to pursue internal democracy. To begin addressing this question, I want to suggest that the very academic discourses that this project participates in can have an impact. What we pursue as academic researchers, and make salient as a community of researchers, often finds a way into the classrooms that we teach, thus affecting a larger public's consciousness and informing the sorts of issues that they will scrutinize. For example, what gets communicated in a classroom may reach the opinion pages of newspapers, thus extending to an even larger public. So, even academic theorizing about the good grounds for expecting NGOs to be internally democratic can help to generate these expectations within publics.

The suggested scenario is optimistic, and I am not presuming that it will always or ever play out so neatly; but however interrupted and forlorn at times, these sorts of avenues for public communication and raising critical consciousness hold potential that it is important to keep in view. Indeed, I furthermore choose to be optimistic that were the public demand for NGOs to get their internal houses in order more pervasive, at least some key players within the NGOs (that is, those that ought to be accountable because they claim as much or pursue political access in the name of democracy) would be responsive and attempt action.

But a less optimistic version of how to motivate NGOs' internal democratization might point out that critics of NGO participation at the WTO are increasingly quick to dismiss NGO input on the basis that the NGOs are "hardly the models of democratic accountability themselves" (Evans 2003, 156). This alone is proving to inspire some degree of internal democratization on the part of NGOs seeking direct access to extra-state centers of governance like the WTO. Gaventa's and others' more empirical investigations indicate that there are "a number of examples of attempts by international civil society actors to alter their internal governance strategies to become more participatory and accountable to their constituencies" (Gaventa 2001, 284).

Well-researched recommendations exist regarding the sorts of concrete mechanisms that NGOs can invoke to pursue and sustain greater internal democratic governance. As such studies typically mention, there is no single blueprint, or "one-size-fits-all" mechanisms, for internal democratization (Florini 2001, 39; Gaventa 2001, 280). One seemingly key mechanism for internally democratizing NGOs such that they are more accountable to their grassroots, and thus can offer more democratically rooted input at the WTO, is to staff a permanent secretariat that is dedicated to providing information and even training to the grassroots regarding trade policy issues and law (Fung 2003, 345; Covey 2001, 209-11). This sort of capacity building is critical for empowering the grassroots to hold NGOs to account in the long term, for reinforcing the participation opportunities of the grassroots, and correspondingly for sustaining discursive-democratic norms as the source of the NGO efforts and potential influence. A further suggested mechanism for increasing NGO accountability to their grassroots is peer review: NGOs can institute appraisal processes for other NGOs to review their internal governance (Clark 2001 19; Edwards and Hulme 1996, 8). And there are, emerging out of the large body of research on civil society participation, many further (and contextually-rooted) recommendations regarding the sorts of concrete mechanisms that NGOs can invoke to establish better partnerships with their grassroots.

Engaging adequately and systematically with this research goes beyond my purpose at this juncture. In gesturing towards some of the mechanisms available for the internal democratization of NGOs, my point is to suggest that it is feasible for the NGOs that are able effectively to target the WTO to make good on their democratic commitments, and take on the responsibility of ensuring that their discursive-democratic ties are sustained. And then my broader point is, again, that these efforts could go some distance towards managing the risks that worry Habermas—the risk for non-discursive forces like money, social power, and luck to determine which groups achieve access and influence at extra-state centers of governance. If NGOs more rigorously pursue their own internal democratization, then NGOs' contributions at the WTO will be at least somewhat more reflective of discursive-democratic norms than of normatively arbitrary forces. It would to some extent reinforce the reasonableness of expecting that this context of "leap-frog" activity is indeed capable of moving towards the discursive ideal.

So far, then, I have suggested that the gradual process of civil societies' "self-selecting," combined with self-conscious efforts by NGOs to attend to their own internal governance, can have an important impact on which NGOs have access to the WTO, in terms of working against the risk for such power to be to be the product of non-discursive forces like wealth and lucky positioning. This suggestion does not, however, do away with Habermas's worries. To begin, it may prove too optimistic. Moreover, calling upon NGOs to be accountable to their grassroots will do little to rectify the disempowerment of those from developing countries at the WTO if it so happens that few of the NGOs targeting the WTO actually even claim to speak on behalf of the grassroots from developing countries. And so my argument for enhancing channels at the WTO so that the spontaneous, decentralized civil society mobilizations can have direct input ultimately must acknowledge that Habermas's objection to leap-frog activity in general indeed has some bite in this context. But I do hope to make compelling the suggestion that the risks Habermas highlights do not actually outweigh the importance of pursuing direct access for NGOs at the WTO. This is particularly apparent, I think, when one considers the normative gains that such activity can achieve.

The range of irreducible normative gains

Fair or proportionate presence, with respect to those affected, is always important for democratic deliberations. But it arguably matters more when the whole purpose of engaging in a discursive-deliberative space is to influence the more-or-less punctual decisions and policies emerging out of that space (Fung, Levine, Gastil 2005, 278). According to the deliberative model, the legitimacy of a particular collective decision is in part a function of its emerging out of a deliberative space that is open to those affected; and indeed its quality depends on those affected actually being present to give their own voice to their perspectives. But proportional presence may be less critical when the purpose of engaging in a discursive-deliberative space is broader than the goal of producing a punctual outcome that is informed and legitimate. This is the suggestion I want to explore here: that even if NGO presence at the WTO is disproportionate for now, there are still important normative gains to be had by improving the channels for direct NGO input.

Specifically, I have in mind the further goals introduced and elaborated in Chapter Three—namely, enhancing relations of regard, both within and extending beyond the actual space of discursive-deliberative interaction. To begin with the first of these goals, recall my argument that deliberative spaces can facilitate experiences of recognizing the Other as other, or listening to them on their terms. That is, the dialogical spaces pursued by the deliberative model are well placed to enable such experiences, which can transform one's self-understandings as well as understandings of and sense of connection with others. And interpersonal recognition among those who are indeed able to be present and participate, recall, is itself a normative gain—it fulfills important conditions for individual flourishing. What is more, I have argued that the enhanced interpersonal and inter-group relations of regard among the actual participants can have important spillover effects. The enhanced understandings and relations of regard can eventually shift broader societal patterns of perception and valuation—in ways that could improve future decisions.

I want to suggest that there is some potential for realizing these normative gains in the context of WTO-NGO interactions. The already existing channels for direct NGO input at the WTO—the Ministerials and the symposia events—bring the various government officials into contact with differently situated Others (even if this does not include representatives of all affected Others). And improving these channels (as well as opening further ones vis-à-vis the various subcommittees) such that they are better informed by discursive-deliberative norms—namely, norms like fair participation chances, and expansive openness to topics, modes of expression, and types of reasons—will further help to realize the goal of enhancing relations of regard, both within and extending beyond the NGO-WTO interactive spaces. I am particularly interested in exploring the potentials of improved symposia events. But first I want to illuminate some ways in which the realization of the normative goals at stake is already happening, even before the existing channels are improved. This, I hope, will help alleviate worry that the normative gains I recover and emphasize in this dissertation are just too forlorn in the particular context of the WTO.

For these purposes, I draw on Brock and McGee's study of WTO-NGO interactions (2004), and specifically I draw on their study of UK-based NGOs targeting the WTO Ministerial in September 2003, referred to as the Cancun

Ministerial. NGO participation at this Ministerial arguably made important contributions to transforming relations of regard—both within the actual spaces of interaction and so in ways that offered intrinsic normative gains, and beyond the Ministerial and so in ways that I think help generate better future decisions.

Brock and McGee point out that at the Cancun Ministerial, several UK-based NGOs worked with officials from Southern delegations, for instance to develop media strategies and penetrate the assembled media (2004, 33). NGOs were "able to show Southern country representatives that Northern governments do not represent the views of their entire populations" (32). This is one of the ways that NGO involvement at the Cancun Ministerial importantly helped to transform understandings of self and other, enhance relations of regard, and create feelings of connection or solidarity between officials from the South and certain NGOs from the North. Brock and McGee report that the NGOs were "able to boost the morale of Southern countries" (32). On my interpretation, this is an intrinsic normative gain—arguably the Southern officials who collaborated with the NGOs gained a sense of being recognized on their own terms by those civil society actors, and this "boost in morale" and self-respect is intrinsically valuable. The recognition can also affect the Southern officials' motivation, stamina and courage to stand up to pressure from other, more powerful officials in future negotiations, which can contribute to the deliberative-democratic quality of future agreements made at the WTO.

Brock and McGee furthermore point out that various UK-based NGOs played an important role in bringing into contact, and building linkages and solidarities between, officials from neighboring Southern countries that were accustomed to seeing each other as competitors (2004, 54). Again, these new and unexpected relationships can be understood as emerging out of dialogue that achieved (however imperfectly) reciprocal recognition, enhanced understandings, and transformed relations of regard. And this recognition contributes to the individual participants' senses of self-respect and as such is intrinsically valuable. The recognition also, for instance, generates alliances that, if sustained over time, might give the voices of Southerners more weight in future trade negotiations, in ways that make future agreements of better deliberative-democratic quality. As Brock and McGee themselves say, "collaboration, communication or learning shared between unlikely sets of actors offers potential for making trade policy processes more accountable and responsive to the needs of poor people, and of making alternative versions of trade policy options available and open to debate" (49).

And so Brock and McGee's study of WTO-NGO interactions, as well as Buchanan and Long's study for the Law Commission of Canada (2003), are, I think, attuned to the wider range of democratic contributions that civil society actors can make at the WTO. Certain aspects of both studies can be invoked to lend support to my thesis that effective NGO participation at the WTO is not just about impacting more-or-less punctual decisions and policies; it is also about putting different "perspectives in conversation with one another… [to enable] mutual recognition" (Buchanan and Long 2003, 58); and, correspondingly, it is about shifting the "behaviors, attitudes, and mental templates of particular actors in the trade arena" (Brock and McGee 2004, 52).

Buchanan and Long's as well as Brock and McGee's studies moreover indicate that a prevailing focus on punctual policy impact—or, more specifically, on the lack thereof—may be diverting attention from these other significant democratic contributions that civil society actors can and are making. The prevailing focus on punctual policy impact can be seen in the way that the WTO's public symposia events are typically sidelined by NGOs and academics alike (for example, Buchanan and Long 2003, 24-5; Charnovitz 2000, 191; Khor 1999, 44). As put by Buchanan and Long, "[d]espite the symbolic importance of symposia as an example of the formal recognition of NGOs as legitimate players in the trade policy arena, significant skepticism does still remain with respect to their utility" (Buchanan and Long 2003, 24). But I want to suggest that even though these symposia events have no direct impact on the more or less punctual outcomes of the trade negotiations at the WTO, the normative work they are capable of doing is far from insignificant. The symposia events can reconceived as rich spaces for generating the interpersonal and inter-group relations of regard that I have argued are critical and irreducible normative gains.

The WTO's public symposia events

The first public symposium was in 1994, and since then there has been at least one per year (Khor 1999, 44). Until 2000, the events were referred to as "WTO-NGO Symposia"; since then, they have been called "Public Symposia."

The symposia are two or three day events in Geneva organized by the WTO Secretariat, and are meant to bring WTO governments into contact with parliaments, civil society, the business sector, academics, and the media, in order to enable dialogue and deliberatively work through issues. In particular, according to the WTO, the symposia demonstrate that "governments and civil society can have open and constructive dialogues on issues where differences exist, but where possible solutions can also be identified and discussed" (WTO 2005b, 67). As such, the symposia can be thought of as part of the dialogical ~~or~~ understanding-oriented stage in the series of negotiations and deliberations that culminate at the Ministerial meetings.

Until 2001, the symposia were especially criticized for not involving NGO participants in a formal capacity as speakers or panel members. The civil society participants complained of being more or less lectured at by the WTO government delegates (more precisely, by those officials who bothered to show up) (Khor 1999, 44). Civil society participants were, in other words, afforded unfair participation chances. Indeed, these early symposia were perceived as being forums for the unilateral promotion of further trade liberalization (Buchanan and Long 2003, 25).

Since 2001, there have been some noted improvements. For instance, in 2003, of the 22 sessions over a three-day period, the Secretariat organized only half of the sessions, and NGOs themselves organized the rest. This added, participatory dimension for civil groups helps to transform the tone of the events from one where those in power lecture, to one where participants engage in dialogue as equals (Report for International Trade Canada 2003, 9). Diverging views are reportedly expressed in a more dialogical and thus constructive way than in past years (Report for International Trade Canada 2005, 29).

But there are still areas in need of improvement, according to civil society participants. WTO officials reportedly do not take the symposia very seriously. For example, senior WTO officials typically take the time scheduled for a symposium as a holiday, thus not participating at all (Campbell and Paquin 2005, 29). And the officials who are present have been criticized for not really engaging (Lofthouse 2003, 9). To help rectify these problems, participation at the symposia might be expected as an integral part of delegates' jobs, and concrete mechanisms could be introduced to motivate participants to get involved (for instance, expert organizers of dialogical-deliberative events often arrange smaller break-out discussion groups, which then have to report back to a plenary session).[90] Another persisting problem at the symposia is that the questions from the floor can be lengthy speeches; this manifestation of unequal or unfair participation opportunities calls for more rigorous and skilled chairing or facilitation (Lofthouse 2003, 11).[91] Moreover, it has been noted that the potentials for fair, extensive participation, and for building networks and relationships, are compromised by the WTO's refusal to publicize a list of the participants; networking and "greater cross-fertilization" of perspectives could also be improved by consolidating some of the typically many sessions that deal with similar issues (Lofthouse and Jubany 2004, 13, 15).

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[90] For a typology of different approaches to convening public, dialogical-deliberative meetings, see: J. Gastil and T. Kelshaw, *Public Meetings: A Sampler of Deliberative Forums that Bring Officeholders and Citizens Together*. Dayton, Ohio: Charles Kettering Foundation, 2000.

[91] Fung, Levine and Gastil, for instance, emphasize the necessity of a trained facilitator for achieving quality dialogue and deliberation (2005).

Improving the public symposia in the above ways would contribute to the potentials for these spaces to facilitate more fair and equal dialogue and deliberation, and correspondingly, to promote meaningful encounters with difference and recognition of the Other as other. Indeed, one might suggest that the symposia events already, in general terms, have some design features that are conducive to the listening that is central to transforming or enriching one' perception of the other. More specifically, the symposia spaces may be capable of generating interpersonal recognition precisely because they are not directly spaces for punctual policy decision-making. According to Archon Fung's analyses of discursive designs, for example, the goal of mutual learning is best accessed in spaces where the stakes are low, in the sense that actual policy decisions are not being made (Fung 2003, 349). Arguably, this helps participants to engage as equals, and also allows the time that it takes to attend perceptively to the Other, and generate deeper understandings of others as well as transformed self-understandings. Moreover, since the symposia gather people together in a space for two or three days, the participants can engage in informal social interactions, like sharing meals and making small talk. And as discussed in Chapter Three, these informal social interactions can facilitate recognition in the form of feelings of contact with the Other and with the groups that Other makes salient. Then, insofar as recognition is experienced by at least some participants during the course of the symposium, intrinsically valuable normative gains are made.

What is more, the potential for changed interpersonal and inter-group relations of regard among the participants at the symposia events correspondingly promises to impact relations extending outside of these particular events—that is, the changed relations of regard among the participants can gradually transform broader societal patterns of regard. This can, in a variety of ways, contribute to the production of future decision outcomes at the WTO that are more deliberatively-democratic. As already examined, this can happen by way of unexpected relationships and alliances between Southern government officials and NGO actors, as well as between officials from neighboring Southern countries; it might also happen in other combinations. The various possible relations of recognition and regard that can develop among participants within a formal symposium and then extend beyond it can, in a very wide range of possible ways, contribute to the gradual production of more deliberatively-democratic future decisions and agreements at the WTO.

More concretely, some of the WTO government officials who experience recognition of the Other at the symposia events might go home and, for example, play a role in generating trade-related research that is more attentive to the issues brought forth by some of the actors at the symposia who are marginalized at the Ministerials. And that research may reinforce the activities, motivations, courage and stamina of civil society actors, by helping to circulate critical alternatives to the discourses presently dominant at the WTO, and impacting the sorts of ideas that powerful officials at the WTO are responsive to or at least able to hear. So we can imagine spill-over effects, with recognition experienced at a symposia event playing a role in the gradual production of better future decisions and agreements at the WTO.

As another possibility, participants at a symposia event for whom preconceived stereotypes and phobias are transformed because of the relations of recognition and regard developed there, might go home and raise their children in ways that reflect their transformed regard for the Other. And then the potential is there for this generation to act in ways that reflect and extend an ethos of responsiveness. In an indirect yet significant way, extending the ethos of responsiveness can enhance the quality of future collective decisions and policies that are enacted at a range of venues, including that of the WTO.

And consider the possibilities if (as per the WTO's declared purpose for these events) symposia participants included company representatives from big textile production companies like Nike, alongside representatives of persons that the Nike corporation employs in sweatshop conditions (for instance, in the Philippines). When the company representative encounters the Other in this space, his perception and valuation of that Other can shift in ways that (at the very optimistic end of the scale of possibilities) prompt that company representative, when he goes back to his headquarters, to advocate for better working conditions at the company's contracted garment factories in the Philippines. And if institutional change is eventually effected, then the opportunities for gaining social and economic power are redistributed, which in turn can be critical for political empowerment. In a diffuse way, this extends the range of voices that can be present and heard at a forum like the WTO, and thus can in the long term contribute to the production of deliberatively-democratic future decisions and agreements at the WTO.

Underscoring and exploring these and other potential spill-over effects of deliberative involvement strengthens my proposal that there are critical discursive-normative potentials made available by direct civil society or NGO participation at the WTO. The relations of recognition and regard that can develop during the course of a public symposium are normatively rich not only by virtue of being intrinsically valuable, but also by virtue of extending beyond the particular event and potentially enhancing the quality of future WTO decisions and agreements.

Even before employing Chapter Three's conceptual framework, in this chapter I tried to show that some of Habermas's anticipated skepticism regarding the discursive-normative prospects of NGO participation at the WTO is unwarranted. I did so by appealing to Habermas's own conceptual framework: he underlines civil societies' capacities to self-select for NGOs whose agendas do reflect a democratic rather than arbitrary base. I proposed that these gradual processes of self-selection, combined with self-conscious efforts by NGOs to attend to their own internal governance, can have some democratic impact on which NGOs are present and empowered at the WTO. I also suggested that the normative aspiration to produce deliberatively-democratic punctual decision outcomes is more directly dependent upon a democratically representative or proportional presence of affected persons than are the other discursive goals that I underline. As such, my work in the first part of this chapter indicates that even when the focus is primarily on punctual outcomes, greater optimism is called for than Habermas's domestication and general objection to leap-frog activity makes possible.

Nonetheless, achieving a more democratic and proportional presence of affected NGOs at the WTO (and relying upon spontaneous, decentralized civil society mobilizations and initiatives to do so) is undoubtedly a distant prospect: Habermas's anticipated concerns regarding the deliberative-democratic quality of the punctual outcomes capable of being produced in this context certainly persist. Thus, my case for the critical potentials enabled by direct NGO participation at the WTO ultimately does revolve around the further and irreducible discursive gains I presented in Chapter Three. It is that chapter's work that most significantly opens up new possibilities for deliberative democracy.

My study of this case concludes with the view that insofar as there are crucial discursive-normative gains available in this extra-constitutional context, and insofar as direct access to the WTO by civil society groups is as urgently needed as I argue it to be, then despite Habermas's cogent concerns, there are good grounds for insisting upon and pursuing direct access for NGOs at the WTO, as well as for underlining the capacity of these contexts of governance to be deliberatively democratic. Part of this pursuit for normative theorists and academics involves offering a prescriptive framework that helps clarify how such direct access can best unfold. I hope in this project to have taken some preliminary steps in this direction.

I certainly recognize that my reflections on this case study are limited. I bring a normative-theoretical perspective to a context that it would take much more work and expertise to understand adequately. But my remarks on WTO governance do not posture as a comprehensive analysis. Rather, they are meant to show the broad shape of an inquiry that could bring a new understanding of deliberative democracy to bear on this policy context; and my remarks invite interdisciplinary dialogue and collaboration among a range of perspectives. This dialogue could, for instance, productively include political theorists and academics; legal theorists and professionals; economists; organizers and practitioners of dialogue and deliberation; and activists from NGOs and GROs. Indeed, a dialogical, deliberative construction of the normative recommendations pertaining to this as well as further contexts of governance is just the sort of work aspired to by the deliberative democratic paradigm.

Conclusion

I have defended a theory of democracy that is both rooted in and aspires to help realize equal respect for persons. Normative democratic theories in general have as their starting point the ideal that persons deserve equal respect, and maintain that one key aspect of this ideal is that persons should have a say in the norms, policies, and decisions affecting them. The deliberative model offers a particular elaboration of this commitment to political empowerment: the basic idea is that we need fair and open dialogue and deliberation when collective issues are at stake. And I have argued that discursive processes should be expansively open so as to realize the norm of equal respect for persons across its full range; expansive openness promotes the interpersonal recognition that is so important for producing quality deliberative outcomes, as well as for nurturing personal integrity.

I show the deliberative paradigm's strengths relative to other normative models of democracy, but I make no attempt to establish it as universally true or right. I maintain that any normative proposal reflects aspects of the particular historical and cultural context out of which it emerges; and that in order to respect others, both present and future, we need to sustain an awareness that we might not have got things right. Given this orientation, I proceed with a discursive theory on the fallible but not uninformed presumption that its operative foundation—equal respect for persons—is widely acceptable. To some extent, I also presume that the deliberative-democratic elaboration of this basic norm is widely acceptable: it is, at least, the leading theory of democracy held by many, variously situated contemporary political academics and practitioners. Granted, this invites the intensive empirical work of actually checking out the extent of the deliberative paradigm's acceptability (and my particular articulation of it), especially from different cultural perspectives, via processes of dialogue and deliberation. But for now I think there is enough support for the general spirit of the deliberative ideal to suggest the potential usefulness of my project of refining the model and investigating the work that it can do for us here and now. Moreover, insofar as this project participates in a dialogue broadly construed, then offering my elaboration and application of the deliberative model is one small way of investigating its acceptability.

I maintain that some of the very important political work promised by the deliberative model is sidelined by Habermas's domestication of it—by his claim that domestic constitutional structures (or their postnational replications) are necessary for occasions of deliberative, democratic governance. In Chapter Two I highlighted places in Habermas's arguments where he seems to lean towards the stronger and thus even more worrisome view that constitutional frameworks are the only possible centers for generating discursive gains. But my concerns pertain even to his weaker domestication, which I have reconstructed as motivated by pragmatic concerns about civil society activism in extra-constitutional contexts.

The issue that divides me from Habermas can be thought of as an argument about the balance of risks. Habermas worries that outside of the (ideally) protective and filtering framework of a constitutional structure, individuals and groups vying for political voice will be overwhelmed by actors who can capitalize on social power and lucky circumstances. Political energies are thus better directed towards domestic state channels that are structured to equalize opportunities for access.

In Chapter Two I suggest in general terms that Habermas's domestication *underestimates* the urgency of pursuing political voice in extra-constitutional contexts of governance. I underline that not every person has access to constitutional channels for political input. And I emphasize that even where the formal channels do exist, there are numerous forces working against their constituting meaningful opportunities for empowerment (not the least of which are the near-global neoliberal trade rules legislated by the WTO). In Chapter Four I get more specific and concrete: I pursue the same line of argument but cater it to the particular case of WTO governance and the civil society groups targeting it.

In Chapter Four I also argue that Habermas *overestimates* the risks of mobilizing for direct access in extra-constitutional contexts—and more specifically, in the context of WTO governance. The most important contribution to this argument, I think, draws on my analysis, in Chapter Three, of the irreducible range of gains that dialogue and deliberation facilitate. Typically, the focus of deliberative democrats is on the more or less punctual outcomes of deliberative processes. Admittedly, producing direct deliberative outcomes is a central purpose of a deliberative paradigm of democratic politics. But it is not the only purpose.

It helps here to recall the deliberative model's broader orientation: toward the norm that persons deserve equal respect. One important way of pursuing this ideal is in terms of the deliberative criterion of legitimacy: rules and policies for collective life are only legitimate if they emerge out of fair processes of dialogue and deliberation that are open to all affected. So, the dialogue and deliberation prescribed by the model are supposed to generate (punctual) outcomes that reflect the norm of equal respect—at least more so than do alternative conceptions of democratic decision-making. But dialogue and deliberation can help realize the norm of equal respect in other ways. Discursive processes can enhance relations of recognition and regard so as to (1) contribute to the participants' personal integrity or self-respect, and (2) reverberate outside of the particular discursive space in ways that open up the potential for future decision outcomes to have a deeper deliberative-democratic quality. These further normative gains contribute to realizing equal respect in ways that are not reducible to punctual deliberative outcomes.

Having aspired to make this typology of normative gains compelling in general terms in Chapter Three, I proceed in Chapter Four to consider their availability in the context of NGO mobilizations for direct input at the WTO. I suggest that if certain of the WTO's provisions for NGO access are developed rather than prematurely sidelined, and if the tendency to focus on punctual outcomes is nuanced, then this context can be reconceived as one that offers key discursive gains, and important occasions of deliberative democracy. Even if the risks of direct NGO activity that concern Habermas and others do compromise the more or less punctual policies and agreements made at the WTO, NGO mobilizations for direct access and input at the WTO can and do help to realize the ideal of equal respect and deliberative democracy in other ways.

My distinctive conception of the deliberative paradigm—centrally because of its expansive procedural openness, its attention to the subtle dimensions of deliberative involvement, and its non-foundationalistic and situated justification—is more responsive to, and enabling of meaningful contact among, persons situated within diverse social and cultural contexts. Finding constructive ways to bring a diversity of voices into conversation is a critical undertaking for our time, when many transnational and even global interactions and interdependencies are being reinforced and accelerated. One of the most important tasks for my generation is to bring a new and compelling normative vision and framework productively to bear on the globalized processes that construct our present reality. By putting my deliberative paradigm into dialogue with a policymaking context like the WTO, I participate in this task: my project extends normative reflection on a crucial center of transnational governance—one that figures prominently in shaping processes of globalization.

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